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ABSTRACT

This report examines the status of nonpublic education and makes recommendations for halting the enrollment decline in nonpublic schools. The report warns that should this enrollment decline continue, the social and economic costs to the nation will be too costly in comparison with the lesser costs for public intervention. The panel recommends that (1) a four-pronged Federal assistance program for the urban poor be established, (2) Federal income tax credits to parents for a portion of nonpublic school tuition expenditures be set up, (3) a Federal construction loan program be established, and (4) tuition reimbursements on a per capita allocation formula in any future Federal aid program for education be established. In making its recommendations, the panel gave serious attention to constitutional issues. A related document is ED 053 644. (Author/JF)

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NONPUBLIC EDUCATION AND THE PUBLIC GOOD

THE PRESIDENT'S PANEL
ON NONPUBLIC EDUCATION

EA 004 275

FINAL REPORT

The President's Commission on School Finance

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President's Commission on School Finance

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April 14, 1972

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

On March 3, 1972 your Commission on School Finance submitted to you its Final Report, covering the aspects of our study which were required by Executive Order 11513, dated March 3, 1970.

Within the Commission you appointed a four-member Panel on Nonpublic Education with directions to report to you on matters of special concern to the Nation's nonpublic elementary and secondary schools.

The Report of the Panel on Nonpublic Education is submitted herewith. In reading this report, it is important to recognize that it represents the views of the Panel members and that it has been neither reviewed nor approved by the Commission as a whole.

Respectfully submitted,

Neil H. McElroy

462-107 O - 72 2

President's Panel on Nonpublic Education

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April 14, 1972

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

I have the honor to submit to you the final report of the President's Panel on Nonpublic Education which you established on April 21, 1970. Throughout its deliberations the Panel has kept uppermost in mind your request for recommendations "that will be in the interest of our entire educational system."

Our findings confirm your initial assessment of the non-public school situation: enrollments are falling and costs are climbing. The trends, however, are neither inexorable nor inevitable if certain initiatives are undertaken. We have sought to discover reasons for, and implications of, enrollment losses. While the causes are multiple, interrelated, and difficult to isolate, the implications are clear. If decline continues, pluralism in education will cease, parental options will virtually terminate, and public schools will have to absorb millions of American students. The greatest impact

will be on some seven of our most populous States and on large urban centers, with especially grievous consequences for poor and lower middle-class families in racially changing neighborhoods where the nearby nonpublic school is an indispensable stabilizing factor.

The social and economic costs to the Nation are too high to bear when compared to the lesser costs for effective public intervention. The Panel, therefore, makes these four major recommendations:

(1) A Federal Assistance Program for the urban poor through a four-pronged approach which includes: (a) reimbursement allowances to welfare families for expenses connected with sending their children to nonpublic schools as well as supplemental income payments to the working poor for this same purpose, (b) experimentation with voucher plans for parents of inner-city school children, (c) strict enforcement of the Elementary and Secondary School Education Act so all children receive the full benefits to which they are entitled, and (d) adoption of a Commission on School Finance recommendation for an urban education assistance program to provide interim emergency funds on a matching basis to large central-city public and nonpublic schools;

(2) Federal income tax credits to parents for a portion of nonpublic school tuition expenditures;

(3) A Federal construction loan program;

(4) Tuition reimbursements on a per capita allocation formula in any future Federal aid program for education.

Because the crisis is most acutely felt by church-related schools, notably Roman Catholic, the Panel has given serious attention to the constitutional issue. It is persuaded that

although direct aid to nonpublic schools is prohibited, aid to parents and to children will pass judicial muster. Anticipating that such recommendations may provoke a debate of significance to all American education, the Panel presents criteria which, hopefully, will prove germane and useful.

But the recommendations have not sought to evoke public response only. Much can be done by the nonpublic school community to help itself. Concrete suggestions, which can be adjusted to the needs of different nonpublic schools, have also been made. Conscious of the great needs in the public sector, the Panel has acted on the premise that while nonpublic schools need and deserve outside help, large efforts of self-help are also required. A private voluntary enterprise (a waning aspect in American life) must retain substantial responsibility for its own affairs, lest it become private and voluntary in name only.

One final note: the next few years are critical to the future of pluralism in education. Whatever is done must be undertaken with a profound sense of urgency.

Respectfully submitted,

Clarence C. Walton

Clarence C. Walton, Chairman

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CHAPTER I

PROLOGUE: MANDATE AND BELIEFS

THE NATURE OF THE MANDATE set before the President's Panel on Nonpublic Education as well as the Panel's related beliefs must be clear from the outset. For this reason the Panel immediately addresses itself to a clarification of these aspects.

A. The Mandate

The President's Panel on Nonpublic Education came into existence on April 21, 1970, when President Richard Nixon established this four-member group and charged it to do three things:

1. To study and evaluate the problems concerning nonpublic schools;
2. To report the nature of the crisis confronting nonpublic schools;
3. To make positive recommendations to the President for action which will be in the interest of our entire national educational system.

The Presidential mandate, therefore, directed the Panel's investigations into the formally structured programs carried on by schools. In its deliberations, however, the Panel became keenly aware of an important and sometimes overlooked fact: **While schooling is education, education is more than schooling.**

Research findings which deal with early childhood learning may turn out to be more significant than evaluations of present structures. Small illustrations signal large issues. The fact that eighteen-month olds reveal little difference in learning capacity and three-year olds exhibit sharp differentials tells us how much more we need to know about this critical and relatively short time span of early life. Little is known of and less is done with ways to help parents understand and fulfill their teaching role in the infant's life, to encourage families to help other families with the very young, to spur churches to go

beyond ritualistic preparations for baptisms, confirmations, or bar mizvahs in their relationships to the child, and to deploy public resources so effectively that teachers interact more constructively in the parent-child relationships.

In a more enlightened day, we shall learn how to respond more innovatively to the coming of a new and precious resource, the newborn child. For the present, however, it is important to remember that the Panel's charge was to focus upon the child **after** he has entered the formal schooling process. And even within this time frame and within this institutional setting are enough complexities to excite the energies of all and chasten the ambitions of most.

A proper response to the President requires answers to seven important questions:

1. What is meant by nonpublic schools?
2. What positive features and what forces make their preservation a desirable and an achievable objective?
3. What negative factors severely jeopardize their future?
4. What are the added costs, economic and cultural, to the American public if nonpublic schools decline and deteriorate?
5. What should government do in a constitutionally acceptable and economically viable way to help nonpublic schools?
6. What should the nonpublic school community do for itself?
7. What criteria are most relevant when Americans engage in the debate on the future of American education?

Answers to these questions are governed by facts and conditioned by beliefs. How the Panel's conclusions have been affected by its basic philosophy may be best perceived through a straightforward statement of its own credo.

B. Basic Beliefs

When a child is born, one cycle in the miracle of human love and human need ends. Another begins. The new cycle involves questioning and answering. Because the infant is totally dependent, it becomes the task of others to answer by word and deed the two most profound questions any society faces:

What is a *human* being?
What is *being human?*

The first query relates to fact: someone exists; the second relates to fulfillment: existence is growth. Growth requires nurture and direction, which are, in turn, the basic ingredients of the learning process.

From such elementary observation emerge profound implications dealing with the sanctity of individual life, the inviolability of each

person, the child's dependency on others for fulfillment, the primacy of the parental role, the necessary supportive involvement of society through its school systems, the large uncertainties on how growth and maturity are best achieved. Because various people read these implications in different ways, a summary of our convictions is appropriate. Our credo is easy to state, noble to contemplate, difficult to realize.

We believe that when parents send offspring to school, a unique kind of contract comes into being. Parents, literally and figuratively, ask the teacher: "Will you help our child learn?" They invite someone outside the family to participate in the quasi-mystical, highly intimate, and deeply reverent enterprise of launching a human being into the *"being human"* stream. Long before the child reaches adulthood, millions upon millions of stimuli (books and people, sights and sounds, tastes and touches) will pound and batter the youth. It is the teacher's function to help sort out and transmit proper signals; it is the teacher's role to share in the parental responsibility. Home and school unite in a sacred trust!

We believe nonpublic schools, in their variety and diversity, offer important alternatives to state-run schools. It is conceivable that in years to come a larger degree of diversity will become characteristic of the public school system. But until public schools offer wider alternatives, it is not only legal but right that nonpublic options be available. Whether these nonpublic schools be rich or poor, traditional or experimental, boarding or day, church-related or not, they have been, are, and should continue to be important parts of the varied American educational scene.

We believe that men do not live by knowledge alone. They also live by a set of human values—ethical, moral, and religious. The nonpublic schools consciously seek to explore the utmost reaches of these values and to inculcate in the young a respect for them. The secular underpinning for these values is found in the seedbeds of Greco-Roman civilization; the spiritual base rests chiefly on a Judeo-Christian religious tradition. The resulting amalgam constitutes our democratic and American values. Some two centuries have not eroded the importance of what a 1781 charter of a nonpublic school said so well:

> Goodness without knowledge is weak and feeble; knowledge without goodness is dangerous. Both combined form the noblest character and lay the surest foundation of usefulness to mankind.[1]

We believe a major purpose of education is to increase the individual's capacity for the generous enjoyment of life and the generous

[1] John Phillips, 1781.

sharing of his gifts; consequently, there must be realistic choice—choice of job, choice of church, choice of neighborhood, choice of school. Nonpublic school supporters, while understanding the tremendous burdens placed on public schools, must continue to offer a varied educational experience, use their freedom wisely, merit their tax-free status, and earn a just measure of public support. They must beware of frills, be willing to "make-do," and be eager to cooperate at every possible opportunity with other schools.

We believe that the true vision is not of schools, but rather of the individual child for whose growth the school shares responsibility with parents, church, and community. Nonpublic schools accept this vision, and their record shows a continuing concern for the education of enterprising, creative, and compassionate human beings—a resource on which the future of the Nation depends. It matters little that their numbers are small, but it matters ever so much that their quality is high, their contributions distinctive, their clients committed. They must not only survive; they must flourish.

We believe that, as they flourish, they must ceaselessly remind their patrons to do everything possible to assist the public schools which themselves confront serious problems. The following quotation from a nonpublic school principal's letter to parents of his students illustrates a point the Panel wholeheartedly endorses:

> While you pay tuition at this school, you also pay taxes for the support of your public schools. But paying taxes is not enough. Parents of children in private schools owe concern and time to the tax-supported schools. We are independent of many of the pressures to which they are subjected, and we must use whatever influence we have to support them in their monumental task.[2]

The Panel's premise is clear: there is an interlocking set of relationships between all schools, and failure to recognize this elementary fact can only resurrect or perpetuate narrow partisanships which ill serve the Nation's children.

It is from these philosophical perspectives that we judge. It is for others to determine whether such perspectives make sense, and if they do make sense, to help translate them into reality.

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[2] Phillips Exeter, 1952.

CHAPTER II

THE NONPUBLIC SCHOOLS: A NATIONAL ASSET

A BRIEF DESCRIPTION OF NONPUBLIC SCHOOLS as revealed in their variety, their current status, and their future will serve as a helpful background for this study.

A. Varied Enterprise

While it is commonplace to divide nonpublic schools into two basic types—independent and church-related—generalizations about them, even when so classified, can be dangerously misleading. Some are young institutions struggling for survival, and others are venerable institutions with origins dating to early colonial days; some offer revolutionary new curricula, while others are content with traditional approaches; some are in great demand, while others face a threatening future.

The ten percent of total enrollment now included in nonpublic schools does not suggest, at first blush, any considerable figure, but this percentage represents 5,282,567 students. This number exceeds by nearly 650,000 pupils the total public school enrollment in the Nation's largest State (California) and surpasses by 1,800,000 pupils New York's total public school enrollment. It is indeed a very substantial enterprise.

During the seventeenth and eighteenth centuries nonpublic schools were chiefly small academies, seminaries, or dame schools. Beginning in the nineteenth century and continuing into the twentieth, increasing numbers have been church-related. Some 3,200 independent schools now range in kind from kindergartens to military schools, from boarding (boys, girls, and coeducational) to country day schools, from traditional and highly structured schools to freedom schools characterized by innovation. Some recent additions, like the Street Academies and the Harlem Preparatory School, have sprung up to meet minority needs and aspirations.

Far more numerous than the independents are the church-related institutions, Catholic, Protestant, and Jewish. There are over 18,600 such establishments, the largest of which is Roman Catholic, whose 12,000 schools enroll 4.37 million pupils, constituting eighty-three percent of the total nonpublic school membership.

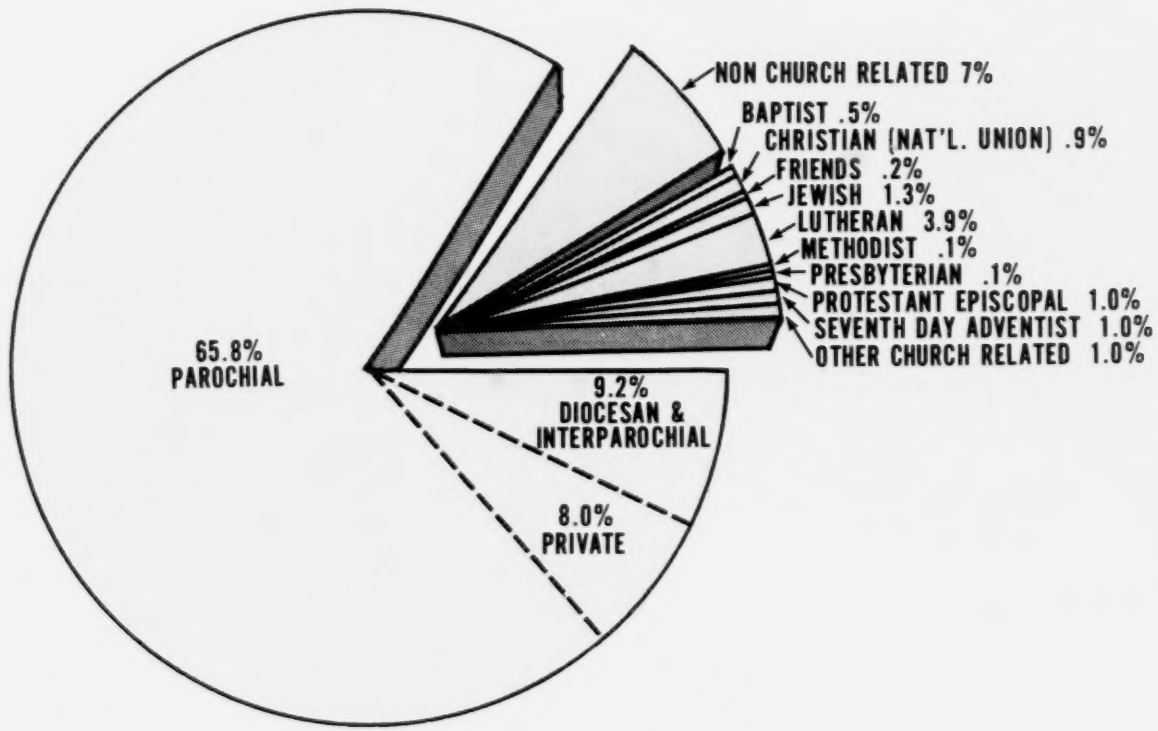
The long history and multiple types of nonpublic schools make several things clear: variety is as stimulating for education as for other spheres; freedom to form such schools is highly esteemed; and alternatives to public education are encouraged. By and large, the support base does not rest on people of wealth but on working families who have paid taxes to sustain public schools and who have paid tuitions to nonpublic schools because they have seen in them the kind of institutions best suited to their children's needs.

B. Current Status

From research, recorded testimony, and distillations of its own experiences, the Panel defines the present status of these schools in the following terms:

1. The enormous potential of parent power is effectively harnessed.
2. Their teachers and students play a large part in decision-making.
3. Many are committed to experimentation.
4. Independent study and individual attention to students hold high priority.
5. Special opportunities for improved education of American Indians, Black Americans, Spanish-speaking Americans, and other ethnic groups are being furthered. They will continue to offer the children of both new and old Americans an opportunity to be educated as patriotic citizens, while, at the same time, they maintain a link with the rich heritage that is uniquely theirs.
6. Many free or community schools are working toward the kinds of life style and education that parents and their children increasingly seek. Respect for the whole person and for warm interpersonal relationships is a factor of increasing importance.
7. Most people no longer see nonpublic schools as a divisive force or as a threat to the public schools, but rather as an integral part of American education, as partners with public schools, and as a necessary witness to the values of voluntarism, pluralism, and diversity in American education. This attitude becomes more evident in considering the following items:
   - A Gallup survey put the following question to a representative sample of the American public: "As you know, there is talk about taking open land and building new cities in this country. New cities, of course, would include

Nonpublic School Enrollment Distribution



ROMAN CATHOLIC 83%

people of all religions and races. If such communities are built, should there be parochial and private schools in addition to public schools?" Seventy-two percent responded yes, twenty-three percent no, and five percent no answer. Respondents in areas where there are both public and parochial schools answered eighty-four percent yes, twelve percent no, and four percent no answer.[1]

- Recent research has confirmed the Greeley-Rossi [2] findings that Catholic schools, the largest segment of the nonpublic school sector, are not a divisive force and would be so regarded only by those few who still dream about a melting-pot kind of American society at a time when sociologists are saying that cultural pluralism urges the conscious encouragement of ethnic and religious diversity. Moreover, our research indicates there is room to argue that the freedom to maintain the distinctiveness that major segments of the population desire defuses disruptive impulses.
- Research shows that public and nonpublic schools' cooperative plans and programs have received solid support from parents of children in both kinds of schools.

8. Public policy generally favors continuance of nonpublic schools. The executive, legislative, and judicial branches have spoken:
   - The President of the United States has declared nonpublic schools "provide a diversity which our educational system would otherwise lack." [3]
   - Acknowledging that nonpublic schools serve a public purpose, the Congress and several States have enacted laws for the benefit of nonpublic school pupils.
   - The United States Supreme Court, in the *Allen* [4] textbook decision, noted that legislative findings and court decisions have recognized that "private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. . . . Considering this attitude, the continued willingness to rely on private school systems strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that these schools do an acceptable job of providing secular education to their students." In the *Lemon* [5]–*DiCenso* [6] decisions, the Court did not reverse its findings in *Allen*, but only outlawed the Pennsylvania and Rhode Island patterns of aid to church-related schools (not necessarily to all nonpublic schools) because they involved the Court's conception of illegal "entanglement" of Church and State.

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[1] "How the Public Views Nonpublic Schools," 1969.

[2] Andrew W. Greeley and Peter F. Rossi. *The Education of Catholic Americans* (Chicago: Aldine Publishing Co., 1966.)

[3] President Richard M. Nixon, "Message on Education Reform," March, 1970.

[4] *Board of Education* v. *Allen*, 392 U.S. 236, 243 (1968).

[5] *Lemon* v. *Kurtzman*, 398 U.S. 569, 570 (1971).

[6] *Early* v. *DiCenso*, 398 U.S. 89 (1971).

9. Nonpublic schools are rendering meritorious service in inner-city areas where their continuance is crucially needed for the education of economically disadvantaged children. For this the following investigations offer buttressing data:
   - A research study in Michigan has revealed that there is "more evidence of equality of opportunity in the church-related than in the public schools." In terms of "educational advantages," a child in a "low status" community is "better off in church-related schools than in public schools." [7]
   - A comparable study in Chicago produced evidence that Catholic schools "were not, as had been charged, filtering off the most intelligent students in each area and leaving the dregs in the public schools. In fact, the Catholic school IQs fell farther behind the public school IQs in poor neighborhoods than in wealthy neighborhoods." Catholic school pupils' achievement was equal or superior to that of comparable public school pupils where "per pupil cost was only 59.8 percent as high as the public school expenditure level."
   - In Chicago, "dollar outlays for instruction by the Catholic schools were more evenly distributed across neighborhoods of varying wealth than was the case with the public schools." It was also reported that "public schools were benefiting wealthy and white communities more than poor and Black communities, while the Catholic schools were benefiting poor and Black communities more than wealthy and white communities."
10. The national mood favors voluntarism in education. This assertion is made in light of these considerations:
   - A nonpublic school is a voluntary enterprise. It begins when a community of people decides to make a private investment in nonpublic education. It continues as long as the community maintains its support. It goes out of business when its backers withdraw their support.
   - The American investment of private funds in nonpublic schools is unparalleled in any other nation of the world. For example, in the Chicago Archdiocesan school system, parents of about 20,000 eighth graders enrolled for next September's Catholic high school freshman class pledged to spend in excess of $32 million for their children's secondary education over a four-year period. That kind of investment in private education is unheard of beyond the borders of our Nation.
   - There is a strong sentiment developing in favor of options, for example, the choice of one of several public schools within a system or the choice of a public or nonpublic school by way of a voucher plan. It would be utterly cynical to presume that all this interest in options

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[7] All quotations in item 9 are taken from Donald A. Erickson and George F. Madaus, *Issues of Aid to Nonpublic Schools, Summary Analysis:* Center for Field Research and School Services, Boston College, Boston, Mass., September 17, 1971.

is motivated only by racial considerations though, unfortunately, racial prejudice of one kind or another is effectively holding up general plans for options based entirely on educational considerations.

C. A Posture for Confidence

In addition to the positive aspects recorded above, there are other grounds for optimism. Because 1971 brought Supreme Court decisions that created considerable disappointment among nonpublic school adherents, there is a tendency to view the recent past as one of unrelieved gloom. A broader perspective leads to different assessments. In point of fact, the year brought these five quite remarkable developments which will be discussed individually:

1. The *Serrano* [8] decision in California (August 30, 1971);
2. The Washington Seminar for Nonpublic School Leaders (May 19–20, 1971);
3. Response by the U.S. Office of Education to a Panel recommendation of February 12, 1971;
4. The Airlie House Conference in Virginia (November 15–17, 1971);
5. The statement of the President's Commission on School Finance (March 6, 1972).

1. The Serrano Decision

The *Serrano* decision is of more than casual interest. Handed down on August 30, 1971, by the Supreme Court of California, the ruling declared that the State's funding system, with its heavy reliance on local property taxes, generated excessive variations of expenditures per pupil among districts. Californians were being classified according to wealth; and classification by wealth, said the Court, is intolerable when it interferes with the "fundamental" interests of individuals. Education is a fundamental interest.

The Panel, impressed by the Court's high sensitivity to the concept of equity, asserts its dedication to the same high ideal and feels that *Serrano* (plus subsequent decisions in Minnesota, Texas, Arizona, and New Jersey) signals important advances in asserting the rights of all children to a fair share of tax resources.

Related to *Serrano* is a Texas ruling by a panel of three Federal judges. The Edgewood Texas School District (with a poor and predominantly Mexican-American population) had a per pupil expenditure of less than $300, as contrasted with $5,334 for the richest Texas district. As the *New York Times* editorialized on December 25, 1971, "When the difference in financial support is almost 2,000 percent, the result is a Tale of Two Schools that makes a mockery of equal protection." The Panel's

[8] *Serrano* v. *Priest,* (Cal. App.) 89 Cal. Rptr. 345 (1971).

concern with the right of every child to equal opportunity and equal protection of the laws under the Fourteenth Amendment explains its interest in—and approval of—the equity principle expounded in these decisions.

2. The Washington Seminar for Nonpublic School Leaders

Another positive note was the immediate and affirmative response to a recommendation made by the Panel, in its first interim report (February 12, 1971), that there be held a high-level meeting in Washington to review the nonpublic school crisis in all its dimensions. As a result, forty-four leaders, representing five million youngsters enrolled in nonpublic schools, gathered in Washington on May 19–20, 1971.

The Panel shared in these historic discussions out of which emerged a decision to form a new organization called the Council for American Private Education. CAPE, as it is familiarly known, is a fledgling organization whose potential is yet to be realized. To its credit, it has already undertaken serious efforts to eliminate the insulation which has existed heretofore among components of nonpublic school systems; and its charter incorporates a philosophy of cooperative relationships with major public school organizations, such as the National Education Association. Its determination to tell the story of nonpublic education is commendable.

The Panel judges these to be important steps. It renders this judgment because any review of school history demonstrates that internecine rivalries—often petty and parochial in nature—have worked to the detriment of children. The widely held and misguided philosophy that what was done for one system must invariably hurt the other will crumble only as common efforts are made to enlist the support of all people at this critical time in American education. CAPE's founding requires CAPE's funding, and the Panel urges its financial support to major foundations and sponsors of nonpublic schools.

3. The USOE Bridge

One of the Panel's first recommendations called for creation of a new structure within the U.S. Office of Education "to deal directly with nonpublic schools and to make effective recommendations to top officials in the Department of Health, Education, and Welfare." The Panel was led to this view by testimony that the nonpublic sector was virtually ignored by public officials: data were inadequate, liaison almost nonexistent, distrust evident. It was the view of Commissioner Sidney Marland that the proposed reorganization might prove dysfunctional and that the proper response was rather a broadening of the Department's vision to embrace the entire educational system, including the previously neglected nonpublic sector. To that end, a coordinator for nonpublic educational services has been named to provide a direct link between the Office of Education and nonpublic schools.

This response is reasonable, and time must be allowed to demonstrate its value. Appraisal should be undertaken and publicly reported no later than December, 1974.

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4. The Airlie House Conference

The U.S. Office of Education sponsored a historic meeting at Airlie House in Virginia on November 15–17, 1971, which brought together approximately seventy educational leaders: over thirty superintendents from large urban public school systems and their nonpublic school counterparts. No such meeting had been undertaken previously. It was encouraging to note that common concerns for quality education permeate the leadership of both the public and nonpublic schools. Even in a group discussion on financing public and nonpublic education which produced the most spirited and most divergent views, the conference summary recorded these telling points: [9]

a. Plural school systems are generally favored by everyone.
b. The problems of public and nonpublic city schools are much the same, that is, eroding tax base and flight to the suburbs.
c. There is some evidence that funding and providing services to nonpublic schools help support public education. The more people involved, the broader will be the support of all education.
d. Nonpublic schools would be willing to submit to reasonable regulations if they use public funds.
e. To help solve urban problems, a new coalition of superintendents, mayors, and union leaders needs to be formed.

The U.S. Office of Education is to be commended for this effort, and the Panel recommends the sponsoring of similar conferences. Initially, meetings of this sort cannot be expected to produce blueprints for action, but they can go a long way toward providing an atmosphere for constructive cooperation.

5. The Report of the President's Commission on School Finance

In its final report the President's Commission on School Finance adopted the following positions:

a. *The Commission recommends that local, State, and Federal funds be used to provide, where constitutionally permissible, public benefits for nonpublic school children, e.g., nutritional services such as breakfast and lunch, health services and examinations, transportation to and from schools, loans of publicly owned textbooks and library resources, psychological testing, therapeutic and remedial services, and other allowable "child benefit" services.*
b. Aware that the provision of child benefit services alone will not make a substantial contribution toward the solution of the nonpublic schools' financial crisis, *the Commission further recommends that governmental agencies promptly and seriously consider additional and more substantive forms of assistance, e.g., (1) tax credits, (2) tax deductions for tuition, (3) tuition reimbursement, (4) scholarship aid based on need,*

[9] USOE: *Conference Summary, 1971.*

and (5) equitable sharing in any new federally supported assistance programs.

c. Evidence is inconclusive in regard to the amount of program participation that nonpublic school children are receiving under Federal education programs for which they are legally entitled. The Commission urges that the Federal Government take action to guarantee to nonpublic school children equitable participation in all Federal programs for which they are eligible. Though these programs would continue to be administered through public school systems, such action would insure that all eligible children attending nonpublic schools participate in federally aided programs.

Neither rhetorical flourish nor desire for self-fulfilling prophecy prompts the Panel to welcome the Commission recommendations as historic ones. The fact speaks for itself. When the Commission began its deliberations, it was difficult for the Panel to anticipate that such support would have been achieved on these delicate points. The action has been taken. The recommendations are going forward to the President and to the Congress. The points for well-tempered optimism are solid. The possibility of imaginative and constructive action now lies before us.

CHAPTER III

THE PUBLIC PRICE FOR PRIVATE FAILURE

LIKE OTHER SIGNIFICANT VOLUNTARY ENTERPRISES in America, nonpublic schools came into being to fill an important need not met by a public agency. They operate under the constant and pervasive challenge of the market: if they fail to measure up to client expectations or if a public agency better serves the purpose, they cease to exist.

But education is not a genuinely free market because the public sector holds a preponderant position which is buttressed by over $45 billion of tax money. If a difference in the resource base makes the existence of nonpublic schools precarious, the situation is rendered more vulnerable because winds of change are sweeping every major contemporary institution. Nonpublic schools feel the full constraint of, but do not enjoy the full benefit of, the market system.

A Rand Corporation report to the Commission noted that the public school establishments of large cities exhibit an incapacity to adjust and that outside pressures are required for innovation. Despite this alleged inability to respond effectively, public school enrollments have increased twelve percent since 1965, while nonpublic enrollments have decreased by twenty-three percent. Possibly a paradox is in the making. It is clear, however, that the public interest is related to the all-important question: **if nonpublic schools do not survive, what consequences follow for public schools and for American society?** Three major conclusions must be considered in rendering a proper answer.

A. Public schools least able to accommodate additional pupils would be the ones generally hardest hit by the tide of transfers.

B. Municipalities, already heavily burdened with rising taxes for projected public education needs, would confront militant demands for even higher tax rates to sustain crowded public schools.

C. Social costs may prove to be even higher than economic ones. For larger cities, closing nonpublic schools would have marked impact on housing patterns, unemployment ratios, and racial stability.

1. *Housing patterns* are altered because people with sufficient money flee from overcrowded schools and leave the poor to endure deteriorating neighborhoods and schools.

2. *Unemployment ratios* between rich and poor, black and white become further distorted because overcrowded schools have a higher proportion of dropouts.

3. *Racial stability* is most threatened where most needed because neighborhood nonpublic schools are frequently the major reason for holding whites in the area.

Prudent policy-making requires analyses of major possible alternatives. If the accepted hypothesis is wholesale closing of nonpublic schools, analysis of State and urban enrollment patterns, respectively, reveals important conclusions. Modifications of estimates obviously qualify the conclusion, and the following analysis draws heavily on research authorized by the President's Commission on School Finance.

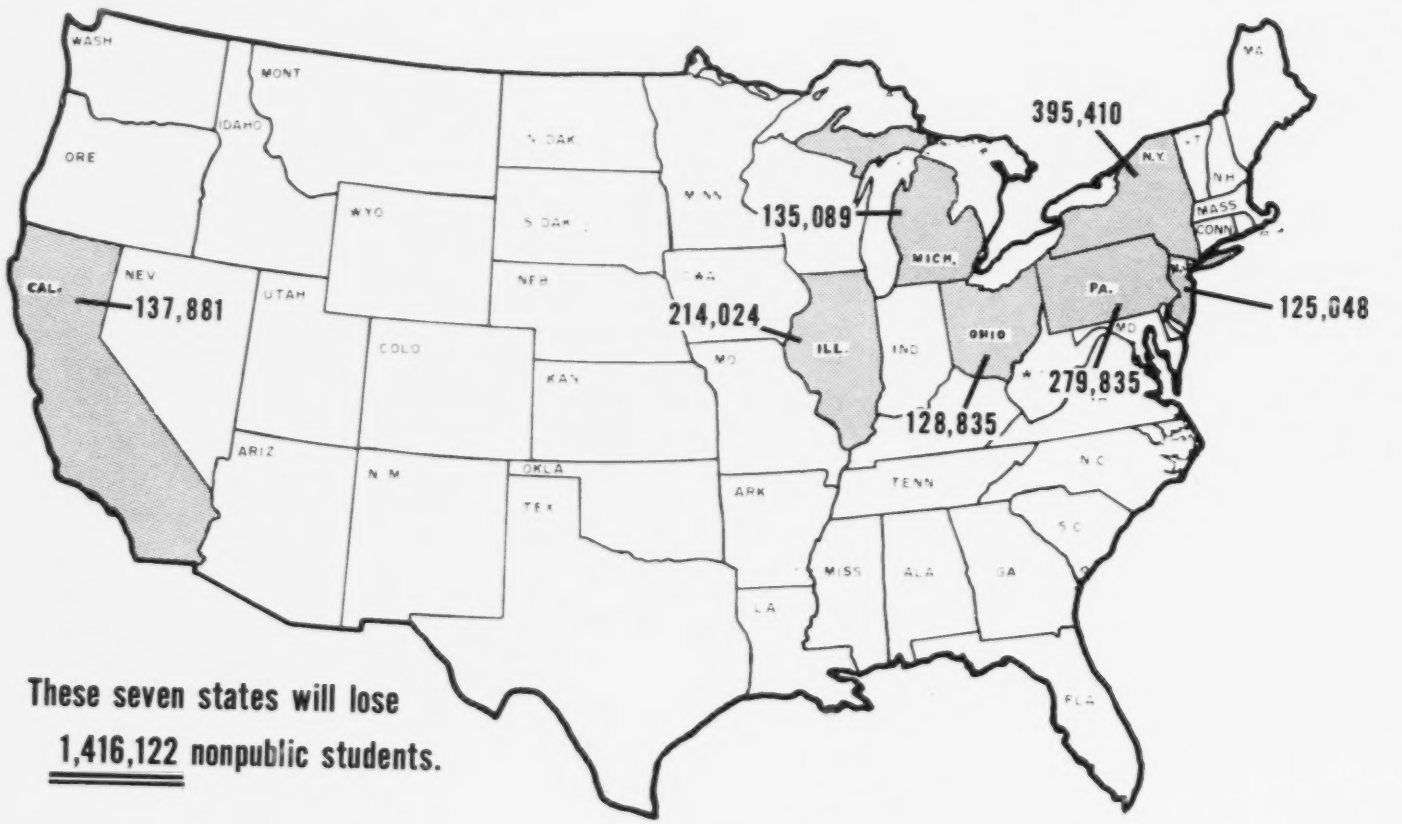
A. State Nonpublic Enrollment Patterns

Nonpublic enrollments are concentrated in New York (789,110), Pennsylvania (518,435), Illinois (451,724), California (398,981), Ohio (339,435), New Jersey (298,548), Michigan (264,089), and Massachusetts (205,011). These eight industrialized and urbanized States are heavily encumbered by costly public services, with serious financial crises a distinct possibility. Disquieting signs are already appearing, such as extended public school holidays in Ohio because of negative school levy votes, Pennsylvania's fiscal brinkmanship prior to recent tax legislation, and staggering budget demands on California and New York.

Michigan is a dramatic case in point. Aware that its nonpublic schools (which in 1970 enrolled 287,000 pupils, or some fourteen percent of the State's school-age children) were in financial trouble, the legislature passed a bill authorizing use of tax funds for partial payment of the salaries of lay teachers in Michigan's nonpublic schools. The amount authorized for this purpose was limited to two percent of the total State outlay for education. In effect, the law brought aid to nonpublic school pupils at an annual rate of about $130 per pupil, much less than the annual rate of $843 per public school pupil.

In November, 1970, the Michigan plan was overturned by voter approval of a constitutional amendment. Subsequent court action sustained the voters' veto. Repercussions from Michigan were felt across the Nation. Word reached the Panel that some nonpublic

Projected Concentration of Nonpublic Enrollment Losses 1970 to 1980



These seven states will lose
1,416,122 nonpublic students.

school leaders in Michigan were considering a total shutdown of their systems and that public school authorities were bracing for an avalanche of transfer students from closed nonpublic schools. Further reports indicated that parents of nonpublic school children were organizing a "vote no" crusade to defeat proposals for millage tax increase to pay public school bills and that some parishioners were strongly objecting to announcements of tentative plans to shut down parish schools.

Because of the nature of this crisis and its possible meaning to other States, the Panel met in Lansing on May 24, 1971, with a number of business, education, and government leaders. After its investigation, the Panel concluded: that the school controversy had left a large segment of Michigan citizenry frustrated and, indeed, bitter; that Michigan's leadership in quality nonpublic education had been seriously impaired; that the large and financially hobbled urban centers, notably Detroit, would have to provide facilities for a substantial number of transfer students; that the white ethnics and Blacks in Detroit who prized their nonpublic neighborhood schools faced the dismal prospect of losing such facilities in the near future; and that projections for the State's educational budget suggested an increase from $1.9 billion in 1970 to $3.7 billion by 1975—an increase that could outstrip revenue by some ninety percent.

The inescapable conclusion is this: **the prospect of massive dislocations exists in eight of the Nation's most populous States.**[1]

B. Urban Impact

The significance of nonpublic school enrollment for metropolitan areas is suggested by a simple statistic: eighty-three percent of such enrollment is found in these regions. *In the twenty largest cities, nearly two out of five school children are enrolled in nonpublic schools.* The top fifteen cities have the following enrollment figures, which reveal, interestingly enough, that ninth-ranked Buffalo and last-ranked St. Paul have percentages approximating that of Philadelphia, where nonpublic schools enroll one of every three students.

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[1] *Economic Problems in Nonpublic Schools,* p. 326.

City	*Nonpublic enrollment*	*Percentage of total*
New York City	358, 594	24. 3
Chicago	208, 174	27. 3
Philadelphia	146, 298	33. 6
Detroit	58, 228	16. 5
Los Angeles	43, 601	6. 3
New Orleans	41, 938	27. 2
Cleveland	36, 922	19. 4
Pittsburgh	36, 661	19. 4
Buffalo	36, 623	33. 8
Boston	35, 237	27. 1
Baltimore	33, 833	15. 0
Cincinnati	32, 653	27. 4
Milwaukee	32, 256	19. 8
San Francisco	29, 582	23. 9
St. Paul	22, 267	30. 3

In changing neighborhoods of such cities exist balances so delicate that access to a school of choice affects a decision to move or to stay; in the cities, too, are found other changing balances because unemployment, poor housing, infant mortality, and crime hit the poor with vengeance. For example, a statistical sampling of county unemployment rates, welfare case loads, and housing vacancies as these affect Chicago, Detroit, and Milwaukee reveals a consistently higher city rate than found in adjoining communities. The obvious conclusion is that **if the Nation needs vigorous cities, vigorous cities need their nonpublic schools.**

It is from these perspectives that a realistic assessment of the nonpublic school condition must be undertaken. The strength of the social fabric is at stake, and schools—all schools—are an essential strand in that fabric. If the strand is weakened or severed, the unravelling process will accelerate with potentially disastrous consequences for the Nation. A weakening is at hand.

For the past five years, nonpublic school enrollment has been moving downward at an alarming six percent annual rate. If this trend continues, enrollment will be about twenty-five percent less in 1975 than in 1970. The presently distressed area is Roman Catholic, where exists a distinct possibility that within a fifteen-year period, 1965–1980, enrollment may drop by almost sixty-five percent. Multiple factors are at work, among which are:

1. Movement of children from neighborhoods where there are nonpublic schools to neighborhoods where there are none;

2. Closing of nonpublic schools with resultant transfers to public schools;
3. Parents' reluctance to send children to financially troubled schools;
4. Parental decisions to avoid high tuition rates;
5. Parents' failure or inability to perceive any special educational and/or religious values in a particular school;
6. Lack of uniqueness;
7. Changing religious and cultural mores among parents in suburban areas;
8. A lower birth rate in a particular locality.

It is simplistic to conclude from research on enrollment trends that any single factor is so overriding that others can be discounted. Indeed, for city families with marginal disposable incomes, the cost may loom largest; whereas for suburban parents it may be distance to the nearest nonpublic school, new mortgage responsibilities, or secular attitudes.

While attention has been focused on Roman Catholic schools because they represent the largest and hardest-hit nonpublic segment, the problem is not exclusively theirs. During the past two years, enrollments in independent schools have declined about eleven percent; at military schools, ten percent; at boarding schools, four percent. Despite present rates for boarding students in excess of $4,000 a year, costs continue to outrun income. Ten years ago, only a quarter of the Nation's independent schools were operating with deficits; by 1971 the figure had doubled, and about twenty-five private schools have closed doors since 1968. As *Newsweek* (January 31, 1972) noted, "Most have been caught in a vicious circle: rising costs dictate increased tuition which, in turn, serves to deflate enrollments." [2]

C. Transfer Costs

Estimating cost of transferring all nonpublic school pupils to public schools is exceedingly difficult. A research team from the University of Notre Dame developed three categories, described as: (1) low excess capacity formula, which assumes a decrease in public schools' pupil/teacher ratios; (2) crude excess capacity formula, which assumes no change in pupil/teacher ratios; and (3) high excess capacity formula which assumes that the pupil/teacher ratios will rise to the highest level experienced during the past six years. Using these formulas, the researchers estimated the total cost in a range from approximately $7.7 billion (low excess capacity formula) to approximately $4 billion (high excess capacity formula). The Panel believes

[2] More complete data may be available in a report prepared by USOE. Staff efforts to secure this so-called Kossoy Study were unsuccessful.

the higher estimate is more realistic in view of the trend to reduce rather than to increase pupil/teacher ratios in public schools.

The problem would vary from State to State. In the rural and less densely populated States of the South and West, nonpublic school closings would have little effect. On the other hand, seven populous industrial States (New York, Pennsylvania, Illinois, New Jersey, California, Ohio, and Michigan) would be called upon to absorb seventy percent of the costs associated with the transfer of nonpublic school pupils to public schools.

These seven States would face a severe economic impact because: (1) public school costs are already high in these areas; (2) public school enrollments have not fallen as much as in other parts of the Nation so that the capacity to absorb more students is restricted.

Even more than the State burden would be the city crisis. To give this greater specificity the Panel considered results from research by the School of Education of the University of Michigan. These researchers sought to draw an "urban financial profile" and used Chicago, Detroit, Milwaukee, and Philadelphia for their laboratories.

The question was this: Can the public school systems of these cities, without securing additional facilities, absorb the pupils now attending nonpublic schools if all the nonpublic schools were closed? The researchers took into special account the Catholic schools, which enroll the largest number in each of these cities. Important variations exist.

In Chicago, A. Epstein and Sons, Inc., estimated rehabilitation and replacement costs for the public schools and concluded that $1,103,113,846 would be required, at current prices, to bring Chicago school facilities into good condition. But the University of Michigan researchers added:

> If, in addition, it were necessary to provide facilities for approximately 85,000 elementary pupils from the parochial schools and 45,000 secondary pupils, it would be necessary to increase this budget by at least $464,000,000. This would increase the total to approximately 1.6 billion dollars.[3]

For Detroit, a building program to house adequately all public school pupils would require a minimum expenditure of $234,000,000. If all the Roman Catholic schools of Detroit were closed at once and their students were to be housed by the Detroit schools, an additional $174,500,000 would be required. The research report also noted that if a massive shutdown of Detroit's nonpublic schools were to precipitate a large exodus of families from the city, "Closing non-

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[3] *The Financial Implications of Changing Patterns of Nonpublic School Operations in Chicago, Detroit, Milwaukee, and Philadelphia,* p. 97.

public schools might have greater financial implications for fringe suburban areas than for the Detroit public school system." [4]

Closing of Roman Catholic schools in Milwaukee would add $47,800,800 in construction costs to the $76,000,000 program which has been authorized.[5]

The summary of the University of Michigan for the three cities was stated this way:

> It has been projected that if all the nonpublic schools which are experiencing financial difficulties, including many Roman Catholic schools, were to be closed immediately, the additional cost of housing pupils now in attendance would be as follows: Chicago, $464,000,000; Detroit, $174,500,000; and Milwaukee $47,800,000. These funds ($686,300,000) would be in addition to resources required to fund the long-range construction programs for each of these cities.

If nonpublic schools in these three cities closed over a longer period of time, the result would be that projected decreasing public school enrollment might be correspondingly replaced by transfer students from nonpublic schools. Slowly declining nonpublic school enrollments might make it possible for the central city public school systems, together with the public school systems of the surrounding suburbs, to absorb substantial numbers of the nonpublic school pupils. While the additional cost for capital outlay and operation would be much the same whether students transferred to the city schools or to their suburban counterparts, the financial impact would be distributed over a much greater area and a larger number of taxpayers. But the eventual impact is real and very substantial.

Philadelphia would be in more serious straits. The University of Michigan report indicated that between 1965 and 1971 the Philadelphia school district spent $381,163,000 for capital improvements, but despite these herculean efforts the remaining capital program proposed for 1972–77 still carried an estimated price tag of $339,244,000. An additional $60,000,000 would be required in 1978, and annual expenditures of $40,000,000 for 1979–80 would be needed to complete the currently envisioned capital program. Total cost of all phases of the school building effort would reach $880,-400,000. With inflationary pressures, the total cost could be over $1,000,000,000.

The University of Michigan researchers further reported that:

> Accommodating the 136,500 pupils now in the Roman Catholic schools of Philadelphia in accordance with the goals and priorities set forth would require a necessary additional expenditure of almost $600,000,000. Housing the 58,900 secondary pupils will require about $290,000,000 and the 77,300 elemen-

[4] *Ibid.*
[5] *Ibid.*

tary pupils approximately $310,000,000 with no allowances for inflation.

To consider adding a capital program of $600,000,000, even if spread over the next decade, in the existing long-range capital program for the Philadelphia area seems outside the range of credibility, because 1971 has been a year of crisis for the capital program of Philadelphia public schools. In July 1971, the capital program was halted with the Board of Education announcement of the suspension of 28 projects which were to have been completed during the next five years.

Even with the gradual phasing out to permit incremental absorption of nonpublic school pupils into the Philadelphia public schools, "it would still be impossible for the public schools to provide for them adequately in the existing facilities or with facilities now projected. Even though fifty percent of the nonpublic school pupils were to transfer to suburban schools outside Philadelphia, it would be impossible for the public schools of Philadelphia to absorb the remainder without incurring a crushing financial burden. The present financial crisis has been brought on in part by the necessity of the public school systems to rebuild the entire school plant, after years and years of neglect."

A blue ribbon task force, consisting of thirty-one prominent Philadelphia businessmen (Jews, Protestants, and Catholics), has just completed its analysis of the Archdiocesan schools and declared that by 1975 the cumulative deficit will reach $55.4 million—even though projected per student cost for 1975 is $478, as contrasted with 1971–72 per student costs in Philadelphia public schools of $1,027. Transfers may help the financial status of public schools if State aid increases, but even this prospect is inadequate. Commenting on the task force report, School Superintendent Matthew Costanzo observed that "if we had to take on the number of youngsters they say they will drop, we'll be in dire straits."

The overall dimensions of construction costs are summarized in a report by the National Educational Finance Project, which declared:

> The school building shortage is a reality which cannot be overlooked in school finance programs. Even with the unprecedented increase in school construction since World War II, a deficit of 500,000 classrooms remained in 1968. This backlog of needed construction accumulated during the Depression years and World War II. **Especially in urban districts antiquated and educationally obsolete classrooms which normally would have been replaced have remained in use.**
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> Between 1948 and 1968 the number of classrooms constructed each year increased from 30,900 to 75,400 and the average expenditure per classroom increased from $32,815 to an estimated $67,432. . . . In the decade of the 1970's the Nation will need approximately 120,000 classrooms per year at an estimated annual aggregate cost of $7.8 billion in 1968–69 dollars. . . .

> If these new construction needs are accurate, positive action must be taken to provide the needed funds or a moratorium on construction will result with millions of school children being ill-housed and ill-educated.[6]

The Panel is persuaded that just to meet normal projections of public school enrollment, the public burden will become heavy and can become crushing if large numbers of nonpublic school pupils are transferred into public schools. Apropos is the following statement of the Commission on School Finance:

> Cost projections are startling. Outlays for education will rise substantially during the next decade if present trends continue.
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> Total expenditures of public school systems during the 1970–71 school year came to approximately $45 billion. During 1975–76, according to projections provided to the Commission, expenditures are estimated to reach $60 billion, and will continue climbing to the end of the decade, so that in 1980–81, they will come to some $64 billion. This is in 1970 dollars. If we assume that price increases at an annual rate of three percent, these figures will be approximately $69 billion for 1975–76 and $86 billion for 1980–81. Paying for education is going to place enormous strains on the Nation's taxpayers. What is more, the cost of other public services are going to climb at least as much if not more.[7]

In the Nation there are now 17,498 school districts, which vary enormously in size and in resources; there are over 46,000,000 children in the public schools alone, and the cost of education in these schools will be slightly over $1,000 per child this year, compared with half that sum just ten years ago. The Panel concurs with a *Washington Post* editorial of January 23, 1972: "Any new Federal fundings sufficient to make any real differences to the local school districts will have to run, in national total, to many billions of dollars. It is hard to think of any other public responsibility that is simultaneously so massive and so intricate." Any serious thought about this massive and intricate responsibility must include attention to the fiscal consequences of widespread closing of nonpublic schools.

It is clear to the Panel that most public school budgets, already heavily burdened by soaring costs for present and projected programs, would have to be drastically revised if thousands of nonpublic school pupils were added to public school rosters. Budget adjustments might require double-shift classes, shortened calendars, cuts in enrichment programs, and other reductions in quality. Yet, some public school systems already are confronted with the prospect of having to retrench on important programs for their present student body. Additional students at this time would not lessen the difficulty of giving adequate education to presently enrolled pupils.

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[6] *Future Directions for School Financing*, National Education Finance Project, pp. 29–30.

[7] *The President's Commission on School Finance*, pp. 11–12.

With recommendations from various groups for early childhood education, programs for exceptional children, vocational and adult education at all levels, and for the special needs of the inner-city schools, it is apparent that the magnitude of the challenge—when put in the context of the rising cost of other social services—is tremendous.

Not unrelated to the total problem is a disinclination of the American people to ratify and support additional revenues for the schools. In 1965 approximately three of every four bond issues received public support; in 1971 less than half were ratified.

The following table reveals a melancholy story:

BOND ISSUES

Public elementary and secondary school bond elections held, with number and percent approved, 1965 to 1971

Fiscal year ending	*Number of elections*		*Percent Approved*
	Total	*Approved*	
1965	2,041	1,525	74.7
1967	1,625	1,082	66.6
1969	1,341	762	56.8
1971	1,086	507	46.7

In summary the Panel concludes:

1. Projected costs to maintain the present level of public education and to meet urban school construction needs are prohibitive.
2. The history of rejected school bond issues is not encouraging.
3. The burden for transferring nonpublic school students to the public sector will fall most heavily on States and center cities which already carry heavy financial loads.
4. Collapse of the nonpublic schools in these areas may well prove disastrous.
5. The social costs could prove more onerous and dangerous than the economic burden.

The American people thus face two basic choices:

1. Stand by passively while nonpublic schools decline and accept the inevitable consequences of further increased taxes occasioned by the transfer problem, or
2. Act on the premise that wise public policy requires intervention at critical points to sustain a system which educates over five million youngsters, evokes a multi-billion dollar private investment effort, and provides for parental choices.

The Panel concludes that public action is required, but this raises very complex legal issues.

CHAPTER IV

CONSTITUTIONAL FOUNDATIONS FOR A PUBLIC RESPONSE

BECAUSE NONPUBLIC SCHOOLS MUST MEET both Federal and State legal requirements and because at times sharply different emphases separate the two, the question of aid to pupils enrolled in these institutions involves complex issues of constitutional law.

A. The Federal Framework

Although the American Constitution is silent regarding education, court interpretations of the First and Fourteenth Amendments have developed a legal matrix wherein certain rights and limitations are reasonably defined. Most basic is the parental right of choice of a school for their children—a right safeguarded by the Supreme Court's *Pierce* [1] decision, handed down forty-seven years ago in the Oregon school controversy occasioned by that State's effort to compel parents to send their children to public schools. Although the decision in the 1925 *Pierce* case was keyed mainly to the confiscation of private property without due process (the Oregon statutes would have put all nonpublic schools out of business), the *Pierce* decision did give legal sanction to a parent's choice of nonpublic school for State-mandated schooling.

In subsequent decisions, the Court removed any lingering legal doubts regarding the parents' right to send their children to a nonpublic school. The Court's latest thinking will be revealed in a forthcoming decision involving Amish parents in Wisconsin who have pleaded that they should not be required to send their children to high school because formal education beyond the eighth grade is inconsistent with Amish religious tradition. The case involves profound questions about the public good, the State's role as *parens patriae,* parental rights, and religious freedom.

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[1] *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925).

It is one thing to assert parental rights over the education of children and quite another to protect such rights when the exercise thereof—partly in response to State requirements—is crippled for social, religious, or economic reasons. Consequently, the Supreme Court has been asked over the past 25 years to create a body of law through interpretations of the First and Fourteenth Amendments, with practically all cases hinging on the constitutionality of using public funds for the benefit of pupils enrolled in church-related schools. From these cases have come ground rules which affect every recommendation for government action.

In the 1947 *Everson* [2] decision, the Court upheld the constitutionality of a New Jersey law which provided tax-supported transportation for nonpublic school children on substantially the same basis as for public school pupils. The key to this decision was that the law could not deprive a citizen of a public service either because of his faith or his lack of it. The Court, however, also ruled that the First and Fourteenth Amendments prohibit tax aid for the direct benefit to a church-related school. In effect, the *Everson* decision closed the door to proposals for tax support of nonpublic schools but opened it to a variety of tax-financed child-benefit services. In somewhat oversimplified terms the judicial maxim was that aid to the nonpublic school child is legal, but aid to the nonpublic school is illegal.

In 1968, the Court was asked in the *Allen* case to rule on a New York law which authorized the loan of publicly owned textbooks to nonpublic school children. Evidence during the case was presented to show that loaned textbooks, at least indirectly, helped nonpublic schools by relieving them of expenses which would have been passed along to parents. In a decision with far-reaching implications, the Court ruled that the constitutionality of the statute did not revolve primarily around the question of whether a church-related school was aided in some way, but of whether the statute had (a) a secular purpose, (b) a secular effect, and (c) neither aided nor inhibited religion. The Court ruled that the New York textbook law complied with these criteria.

In 1970, the Court took jurisdiction in the *Walz* [3] case in which the constitutionality of tax exemptions for church-owned real estate was challenged. The Court conceded that tax exemption is surely a form of substantial indirect aid to church institutions but that it was preferable to taxing their properties because taxation would entangle the State in church matters in ways not permissible under the First Amendment. Thus was added the criterion of "excessive entanglement."

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[2] *Everson* v. *Board of Education,* 330 U.S. 1 (1947).
[3] *Walz* v. *Tax Commission,* 397 U.S. 664, 674 (1970).

In 1971, the Court ruled on three separate cases which were, however, consolidated for oral argument and were closely associated in the Court's verdict. The first (*Tilton* v. *Richardson*) involved the constitutionality of the Higher Education Facilities Act of 1963, which provided Federal construction grants for colleges and universities as long as the facility was not used for religious worship or in connection with a divinity program. By a five to four vote the Court upheld this Act and added the proviso that buildings constructed with public funds could never be converted to religious purposes.

The other two cases (*Lemon-DiCenso*) related to religiously affiliated elementary and secondary schools. Involved in the *Lemon* case was the constitutionality of Pennsylvania's 1968 Act which authorized the Secretary of Education to purchase certain secular educational services from nonpublic schools, directly reimbursing those schools solely for teachers' salaries, textbooks, and instructional materials. Reimbursement was restricted to courses in specific secular subjects; textbooks and materials had to be approved by the Secretary, and no payment would be made for a course containing any subject matter expressing religious teaching, or the morals or forms of sectarian worship.

The *DiCenso* decision hinged on the validity of Rhode Island's 1969 Act which provided a fifteen percent salary supplement to teachers in those nonpublic schools where the average per pupil expenditure on secular education was below that of public schools. Eligible teachers were required to offer courses taught only in public schools, with materials used in public schools; further, teachers had to agree not to teach religion courses.

What did the Court decide? The following is apposite:

> Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive governmental entanglement with religion." [4]

On the basis of failure to avoid excessive government entanglement with religion, the Court struck down the aid programs in Rhode Island and in Pennsylvania. The opinion, written by Chief Justice Burger, recognized that the Court's "prior holdings do not call for total separation between Church and State" and that "some relationship between Government and religious organizations is inevitable." The Court nevertheless declared that, unlike such neutral services as bus transportation, lunches, or textbooks, it could not "ignore the dangers that a teacher under religious control and discipline poses to the separation of the religious from the purely secular

[4] *Lemon v. Kurtzman*, 398 U.S. 569, 570 (1971).

aspects of the pre-college education. The conflict of functions adheres in this situation."

In a concurring opinion, Justices Douglas and Black sounded a sharply different note. Because sectarian schools allegedly afford "the church the opportunity to indoctrinate its creed delicately or indirectly, or massively through doctrinal courses," [5] such institutions come under pervasive religious control. Justice Brennan's separate opinion ran along parallel lines. The practical effect was to have four Justices (Brennan, Black, Douglas, and Marshall) take the position that all direct aid to church-related schools, at whatever level and in whatever form, is unconstitutional. The majority was unwilling to accept this position.

In the Panel's view the full Court had an inadequate perception of realities in parochial schools because it failed to pierce the institutional veil. The entire focus was on the powers of the hierachy, the role of the pastors, and the teaching commitment of religious; ignored were parents, teachers, and pupils who are now cut off from certain forms of public assistance.

Others have launched sharper critiques. One such criticism holds that, by judicial fiat, there is now a virtual disenfranchisement of religiously committed people with respect to public policy questions about which their churches have a strong position. They ask whether the civil rights of Lutherans or Jews or Quakers are to be suppressed under the guise of "no religious division" in the same way that the civil rights of Negroes were curtailed by a Supreme Court ruling (*Plessy* v. *Ferguson*,[6] 1896) that "separate but equal" treatment was necessary for peace and order. Finally, it might be noted that some constitutional lawyers feel the time has come to challenge the denial of benefits to nonpublic school students on grounds that educational appropriations are public welfare benefits which should not be restricted by religious conditions. The challenge should be mounted.

Whatever legal opinions are involved, the Panel shares Mr. Justice White's minority statement that not only has the majority decision ignored the evidence in the Rhode Island case ("on this record there is no indication that entanglement difficulties will accompany the salary supplement program") but that—

> The Court thus creates an insoluble paradox for the State and the parochial schools. The State cannot finance secular instruction if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be so taught . . . and enforces it, it is then entangled in the "no entanglement" aspect of the Court's Establishment Clause jurisprudence.

Repercussions from this decision have been many. Michigan, Connecticut, and Ohio had plans to use State funds for teacher salary

[5] *Ibid.*
[6] *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).

supplements, which have now been thwarted; plans for purchase of secular educational services in Illinois and New York have similarly fallen. Still to be decided are Maryland's scholarship plan, tax credit plans in Minnesota and Hawaii, and Illinois' multiple approach, which includes tuition vouchers for inner-city nonpublic school pupils.

In summary, the law is still being molded and shaped by both judicial philosophies and political events so that the final phase in the Federal drama over nonpublic school education is still to be enacted.

B. State Requirements

Meanwhile, States labor with their special judicial problems. Under the Tenth Amendment to the Constitution, "powers not delegated to the Federal Government and not prohibited to the States are reserved to the States or to the people." Under these residual powers, New York in 1894 adopted the Blaine Amendment, which effectively outlawed any form of public aid to nonpublic schools—a prohibition subsequently emulated in one form or another by over forty States.

Having taken such action, the States' logical step was to provide free public school systems open to all—even though fiscal responsibility for meeting these prerequisites fell on local communities. Despite constitutional restrictions and uncertainties, States have continued to enact laws to provide tax-financed auxiliary services for nonpublic school children.

What emerges in States with a Blaine philosophy, however, is an approach toward nonpublic education that is more restricted than possible Federal initiatives; in other States the response is diluted by uncertainty over how far public authorities may legally go to foster the common good when church-related schools are involved. These facets have serious implications for the general-welfare clause of the Federal Constitution and for the level of possible public initiatives the Panel deems most appropriate. In the wind are significant straws which suggest enlargements in judicial constructions, and these will be noted by policy-makers. Some of these indications are worth noting.

C. Latest Judicial Benchmarks

Developments in State courts and in lower Federal courts indicate that the "equal protection" clause of the Fourteenth Amendment will increasingly be called into play. While the full significance of the

Serrano decision is yet to be determined, it strongly suggests that the judiciary has not relinquished the task of social reconstruction begun in 1954 by the Warren Court. Citizens may soon have constitutional rights to demand adequate and fair expenditures for essential public services; hitherto these have been defined by references to such services as fire and police protection. Now the courts hint that welfare, clean air, and clean water may be conceived as "rights."

In the American context, the previous task of social reconstruction has been involved heavily with indirect redistribution of wealth; if equality of treatment is supplemented by a due-process concept of adequacy of treatment, then a formidable new stage in social engineering awaits us. The Court has often shown itself responsive to public opinion and to the needs of the times. Since public opinion today is more aware of the importance of nonpublic schools, more aware of parental rights, and more concerned with mounting educational costs, there is a distinct possibility for a more commodious judicial interpretation of parent's rights over the education of their children.

Other peoples with democratic traditions have met the challenge, and it is difficult to believe that Americans will be less imaginative or less concerned with justice. Canadian law has long allowed religious minorities to maintain their own schools; its federal system leaves the bulk of educational questions to decisions by the several provinces. The effect is a variety of methods which result in substantial amounts of public funds for religious schools. Not unrelated is the Dutch experience in the public funding of educational alternatives. The Dutch have provided financial parity for public and private education for over a half century. The resulting system of "segmented integration" has served as a mitigating factor to restrain the social and cultural impact of modernization. The end result is a guarantee of the right to, and the possibility of, education for every part of the population according to its own belief and choice.

D. The Constitutional Guidelines

Though for the present the Panel must operate within a framework of existing judicial realities, it feels that forms of public support for nonpublic school students must reckon with the following:

1. All laws must be designed to further a public purpose, that is, to promote education.
2. All school pupils should be eligible beneficiaries of aid programs—preferably under a single statutory rubric.
3. Financial assistance rendered for the benefit of a nonpublic school pupil should be subject to review by public authority.

4. Systems of accountability for public benefits to nonpublic students must be balanced in ways which permit legitimate accountability while simultaneously avoiding excessive government entanglement.
5. Cash subsidies for direct aid to nonpublic schools should be avoided.
6. The academic integrity of nonpublic schools must be preserved.
7. While programs requiring day-by-day or week-by-week surveillance of nonpublic schools should be avoided, minimum public educational standards are reasonable.
8. Legislators must continue to wrestle with the paradox that aid for secular subjects must not be distinguished from aid for religious subjects; yet they must be constantly aware of the prohibition against the use of public funds for sectarian purposes.
9. Participation by nonpublic schools in a public aid program should be accompanied by signed compliance with Title VI of the 1964 Civil Rights Act, which outlaws discrimination on the basis of race, color, and national origin.

CHAPTER V

THE PUBLIC RESPONSE THROUGH LEGISLATIVE ACTION

SINCE THE PUBLIC INTEREST is deeply affected by the fate of nonpublic schools, it follows that the Government may not remain indifferent. The real question is whether the States, which have historically been held responsible for education under the Constitution, are equipped to meet the new challenge. Sufficient political, constitutional, and fiscal reasons exist to suggest that States alone are unprepared for this necessary task. In the following analysis attention will be given to specific legislative and administrative actions required for nonpublic school pupils in the public interest.

A. Are Present Responses Adequate?

We have recorded the fact that State responses to the needs of nonpublic school youngsters depend on: (1) the percentage of nonpublic school enrollment; (2) the constitutional flexibilities or inflexibilities; (3) the wealth of the citizenry and their willingness to be taxed for social purposes; and (4) the backlog of unmet needs. Even where fresh plans have been launched to reflect a State's special circumstances, uncertainties persist. Some have been ruled unconstitutional; others are pending in court; several have been enacted into law but not implemented.

In its final report, the President's Commission on School Finance made full State funding of education a pivotal recommendation when it urged States to shift major financial responsibility from local communities to State governments. Federal incentive grants have been proposed as a means to stimulate development of comprehensive plans toward this objective. This advocacy of full State funding, projected almost totally in terms of public schools, raises a very seri-

ous question: Will nonpublic school pupils be placed in a seriously disadvantaged position?

In light of current constitutional and fiscal matters, it is the Panel's considered judgment that public interest requires *the Federal Government to take major initiatives toward a solution of the financial crisis in nonpublic education.* Staying well within the restrictions of the First and Fourteenth Amendments, the Federal Government can enact legislation for the general welfare by providing legal forms of aid to nonpublic school pupils and to their parents. Further, because it is in a position to see the full picture, the Federal Government can perceive interrelationships between all facets of schooling, including the special financial problem in the nonpublic sector. Seeing problems as they really are is the first step toward solution.

The Federal Government not only has the resources to take this step but already has a record of achievement in the Elementary and Secondary Education Act adopted in 1965. ESEA, as it is commonly called, heads the list of Federal programs which have benefited nonpublic school pupils to a significant degree. This law was developed from a valid presumption that inclusion of nonpublic school pupils is required both in the interest of equity and in the interest of securing the political support needed for enactment of Federal aid legislation for public schools. ESEA still stands as the Federal Government's first major legislative achievement which constitutionally and effectively benefits all children.

Appreciation of ESEA's solid accomplishment does not preclude new legislation adequate to cope with the present crisis. More is required than existing special child-benefit services under public school auspices. What is needed is a constitutional and efficacious plan which permits parents to exercise choice without forcing them to assume impossible or unreasonable financial burdens.

Research has revealed that outside help from churches, philanthropies, foundations, and individual donors is not keeping pace with nonpublic schools' escalating expenses; for the foreseeable future, therefore, most additional costs will be passed along to consumers. Many parents, already hard pressed by pleas for more donations to nonpublic schools (notably church-related ones), by higher tuition and fees, by rising taxes (property, income, sales, and other) for public education, feel the limit has been reached. Clearly, any exorbitant increase in tuition and fees leaves parents with little choice but to transfer their children to a public school. In that sense, financial difficulties may be said to be at the heart of the crisis. But in a real sense the burden varies according to spatial distribution. For the inner-city poor the weight is crushing; for middle Americans in the $7,500–$15,000 levels (and especially for those at the low end), the load is significant; for young suburbanites with new homes, new

mortgages, and possibly new value orientations, the encumbrance is more marginal. There are nonpublic schools in the central city which go unused by many who want and need them, but cannot afford them; there are nonpublic schools in metropolitan regions which are under utilized because parents are unsure of their ability to meet expected tuition increases or uncertain of the school's ability to survive financially; there are, relatively speaking, negligible numbers of nonpublic schools in new suburbs because private construction has come to a virtual halt.

Because parents within various socioeconomic groups experience different handicaps in exercising their right of educational choice, public policy is challenged to provide relief from excessive burdens in different ways. Furthermore, simply trying to envision how these needs will be satisfied during the critical five-year span ahead suggests that the Federal Government will become more deeply involved in long-range educational programs.

B. Major Recommendations

The Panel, therefore, proposes four major recommendations:

1. *Federal assistance to the urban poor through:* (a) supplemental income allowances for nonpublic school tuitions for welfare recipients and the working poor; (b) experiments with vouchers; (c) full enforcement of ESEA provisions entitling nonpublic school pupils to certain benefits; and (d) an urban assistance program for public and nonpublic schools.
2. *Federal income tax credits for part of nonpublic school tuition.*
3. *Federal construction loan program analogous to the F.H.A. instrumentality for home buyers.*
4. *Tuition reimbursements to insure equity for nonpublic school children in anticipated long-range programs of Federal aid to education.*

Each of these recommendations calls for detailed analysis.

1. Federal assistance to the urban poor

Is is grossly misleading to presume that the inner-city poor are a nondescript mass of culturally, socially, intellectually, and economically disadvantaged people. These people are individuals, each with talents and aptitudes, hopes and dreams, determinations and drives to make life worthwhile despite job discrimination and other prejudices.

Studies on urban education offer incontrovertible evidence that thousands of children in the heart of large cities are locked into a cycle of unending deprivation which starts with substandard hous-

ing, insufficient diets, and inadequate schools. Retarded in basic skills by the end of the third grade, unable to undertake creative work in intermediate grades, and frustrated by their growing inability in the upper grades, thousands start high school with a self-fulfilling prophecy that they will be on the drop-out list at age sixteen—idle, unwanted, and unemployable.

Better schools alone will not solve inner-city problems; nor will huge sums of additional money break the awful cycle of poverty. Nevertheless, a comprehensive Federal urban assistance program can be used to restructure urban education so it will meet more effectively the needs of the urban poor. Frustration has been generated by the needless complexity and seeming aimlessness of a multiplicity of well-intentioned but poorly designed Federal programs.

The urgency of Federal assistance to the poor in urban public schools is evident, but equally in need are these same children in nonpublic schools. These pupils, too, need experienced and devoted teachers as well as a curriculum designed for inner-city conditions, psychological testing and remedial services, a full range of audio-visual equipment and supplies, health and nutritional programs, counseling for their parents, safe and clean school buildings, and a rich extracurricular program. Many are not receiving all these special services because their schools are generally on an austerity budget, with some on the verge of closing this June.

Inner-city church-related schools face difficult financial problems because: (a) their revenues are derived from low-income clientele; (b) parishes, the chief contributors to the schools, now in the changing neighborhoods count few adherents; (c) the increasing membership in Spanish-speaking parishes are usually very poor; (d) present school buildings are old and expensive to maintain; and (e) instructional costs have increased because more lay teachers are required.

These schools manage to survive because their teachers usually live where they teach and practice what they preach; having voluntarily accepted poverty as a way of life, they are natural neighbors to the poor and create a climate of trust. They deeply feel that their pupils deserve a full program, with all the advantages afforded children who live outside the poverty belt. More help to these children is an imperative.

To achieve this objective the Panel recommends a four-point Federal program which includes: (*a*) supplemental income allowances for nonpublic school tuition to public welfare recipients and to the working poor; (*b*) voucher plan experiments; (*c*) full enforcement of the Elementary and Secondary Education Act entitling nonpublic school pupils to benefits; and (*d*) an urban education assistance

program for both public and nonpublic schools. A brief analysis of each point will elucidate this recommendation:

a. The Panel recommends that welfare reform legislation should include provisions for a supplemental budget allowance for reimbursement of nonpublic school tuition to (1) parents of a child eligible for aid to dependent children, and (2) to parents in the category of the "working poor."

This recommendation is consistent with the objectives of welfare reform, is moderately expensive, and is a practical way to allow the poor to exercise real choice of schools. Indeed, welfare reform rests on the premise that in an affluent nation, citizens should be able to support themselves without relying on monetary aid from the Government. This is why most welfare reform plans include a provision for incentive allowances to welfare recipients pursuing an education, training, or rehabilitation to render themselves economically self-sufficient.

The Panel is convinced that many welfare parents want self-dependence for themselves and for their children; they see in the nonpublic schools a high quality, firmly disciplined, and richly productive education. Welfare mothers have been known to cut back on their food to pay nonpublic school tuition. These parents say to their children that although they depend upon public welfare for food, on public housing for home, on public clinics for health care, their chosen nonpublic school is their oasis in the midst of impersonalism. Indeed, welfare allowances as reimbursement for nonpublic school tuition would also be an incentive to other welfare recipients to sacrifice for nonpublic school expenses beyond tuition.

The proposal's cost is modest. An unpublished staff study of the Joint Committee on Internal Revenue Taxation (February 10, 1972) is the basis for the Panel's estimate that supplementary payments toward tuition costs for welfare recipients and for the working poor would not exceed a total maximum of $30 million a year. This total presumes that about 370,000 children from approximately 175,000 families with annual adjusted gross incomes less than $5,000 would be eligible and that the average tuition allowance would be somewhat less than $100 per child. This means that extra funds would have to be raised from church donations and other sources.

b. The Panel recommends experimentation with the voucher plans which afford parents of inner-city children genuinely free choice between public and nonpublic schools.

There is a pressing need to determine whether inner-city parents with vouchers in hand could bring about improvements in both public and non-public schools. In a laudable effort to help the poor, reforms are often conceived by public officials and implemented by pub-

lic officials as they perceive the needs of the poor, not a few of whom, however, would like less service and more freedom. The voucher plan is a step in that direction.

c. The Panel recommends full enforcement of the Elementary and Secondary Education Act which entitles nonpublic school pupils to certain benefits.

At present, Title I of ESEA is the Federal Government's largest assistance program for urban poor school children. It requires State and local public school authorities to arrange for nonpublic school pupils to receive a wide variety of auxiliary school services under public school control. While fairly effective, these arrangements have been so involved in some places that for all practical purposes nonpublic school pupils have been denied their rightful benefits. The Federal Government should therefore insure full compliance.

d. The Panel endorses the recommendation of the Commission on School Finance for the "initiation by the Federal Government of an Urban Education Assistance Program to provide emergency Federal aid on a matching basis, over a period of at least five years, to help large central city public and nonpublic schools finance such programs as (1) development of experimental and demonstration projects on urban educational problems; (2) replacement or renovation of unsafe, unsanitary, or antiquated school buildings and equipment; (3) addition of remedial, bilingual, and special teachers and professional personnel; (4) addition of teacher aides and other supporting personnel, and provision of instructional materials and services."

This proposal recognizes the urgency of the inner-city problem and the necessity to maintain an effective partnership between public and nonpublic schools. Some formidable obstacles exist, however, for the nonpublic schools. For one thing big-city public-school officials do not favor funding nonpublic schools. According to one Commission-sponsored study, "these administrators do not accept the argument that the taxpayers would get a better break by supporting the nonpublic schools *before* they close rather than paying for the absorption of these students into the public schools if or when they close." [1] A like reaction to this problem is seen among State legislators. In another Commission report, "a majority (58%) disagreed that a school-aged child is entitled to State support of his education regardless of the school attended." [2] The Commission itself obviously viewed the situation differently, as does the Panel, which recognizes the subtle difference between the public and the vested interest.

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[1] *What State Legislators Think About School Finance,* p. 25.
[2] *Big City Schools in America,* Ch. VII, p. 27.

In addition to the political and psychological obstacles there is another rooted in constitutional complications. Due note has been taken of court interpretations which bar direct aid to church-related schools, but the Court must now be asked to face the real-world situation where nonpublic schools provide sound education, generally across sectarian lines, in areas where public schools are often overcrowded and understaffed. Presently the poor have little or no choice, and this poverty factor could make a difference in judicial reasoning regarding aid to a church-related school. In the Panel's judgment it should make a difference.

Constitutional considerations may ultimately require inner-city, church-related schools to alter their corporate structure in order to receive government funds essential to their survival. For example, they may have to be legally separated from the parish; while such a requirement could be regarded as an intolerable form of governmental intrusion, virtually any adjustment to legal conditions is preferable to closing any inner-city church-related schools. In short, the Panel beseeches the Federal Government and the churches to spare no effort to preserve these schools, schools which the poor support out of their meager resources.

To the poor, this Nation should declare: *No more closings of inner-city nonpublic schools!*

2. Tax Credits

The Panel recommends prompt enactment by Congress of legislation to authorize Federal income tax credit to parents for part of tuition payments to nonpublic elementary and secondary schools.

Colloquies with leaders representing a broad spectrum of nonpublic education and dialogues with distinguished experts on constitutional law have encouraged the Panel to make tax credits another specific and urgent recommendation. Under a Federal income tax credit plan, parents of a non-public school child could deduct from their final tax liability (not from their gross income) an amount equal to part of their tuition to a nonpublic school.

The Panel is confident that tax credit legislation will: (**a**) meet constitutional criteria, (**b**) promote the public good by sustaining the current private investment in nonpublic education, (**c**) elicit public support, and (**d**) bolster the morale of parents of nonpublic school children. A comment on each is in order.

(a) Constitutional criteria and tax credits

Federal income tax credits have a strong probability of meeting constitutional criteria. Because the Supreme Court has only recently ruled that legislation "excessively entangling" church and State is unconstitutional, tax credits avoid forbidden entanglement because

under the plan: (1) the taxpayer, not the school, is subject to audit, and (2) the prime beneficiary is the parent who exercises a constitutionally guaranteed option of enrolling his children in a nonpublic school. Also, the charge that tax credits are of indirect aid to a nonpublic school can be countered with the argument that they parallel the kind of indirect assistance which comes from any form of tax exemption—a tax provision held constitutional in the *Waltz* decision.

Equally relevant are these facts. Tax credit legislation imposes no administrative burden on public school agencies, requires no public school system to share its resources with nonpublic schools, and engenders no competition between public and nonpublic interests for funds appropriated for the benefit of all school children. The public schools would continue to receive their subsidies and run their programs as they see fit.

Two important issues remain: whether constitutional criteria require tax credits to apply (1) to school expenses other than tuition, such as fees or textbooks, and (2) to both public and nonpublic school expenditures. The first issue presents little difficulty. No constitutional reason obliges Congress to authorize tax credits for school expenses other than tuition. The second provokes divergent opinion among experts. The Panel perceives nothing inherently unconstitutional in a tax credit plan covering only nonpublic school tuition payments; at the same time, it acknowledges the advantages of integrating tax credit legislation with other laws for the general welfare of American education. Actually, this integration may present no great problem because it now appears that the Federal Government may move in the direction of a general aid formula which allocates funds to the States on the basis of their total school-age population.

Recognizing that legislation should be governed by principles of simplicity, clarity, and enforceability, and should leave no loopholes for abuses, the Panel sees merit in limiting the tax credits to tuition only—an expense which is readily verifiable for auditing purposes and therefore meets the requirements for good law.

(b) Tax credits serve the public good by promoting justice and by encouraging private investment in nonpublic education.

Under the Internal Revenue Code, deductions and credits are intended to establish greater horizontal equity by affording allowances for special burdens and to encourage private investment in activities which serve the public good.[3]

Examples of allowable deductions for special burdens are medical expenses, casualty losses, State and local taxes, and interest payments. Examples of tax incentives are deductions for donations to religious, charitable, and educational institutions, as well as investment and

[3] The Panel's study is drawn from Roger Freeman, *Income Tax Credits for Tuitions and Gifts in Nonpublic Education*, which was prepared for the Commission.

retirement credit respectively. These adjustments are allowed for any number of voluntary decisions. The State and local taxes a person pays depends, in part, on a personal decision regarding his place of residence, standard of living, investments, choice between taxable and nontaxable securities, and the like. If a justifiable reason exists for a taxpayer to assume a particular obligation, such as the adoption of a child, he is entitled to a tax adjustment. The same holds true for a voluntary donation to a college, a hospital, or a church.

It is logical to conclude that tax credits for nonpublic school tuition will, as have comparable adjustments, (1) sustain private investment, (2) relieve the burden of millions of Americans who exercise choice in the education of their offspring, and (3) lessen the likelihood of further burdening the taxpayers if nonpublic schools close.

Private investment in nonpublic schools can only be approximated. One U.S. Office of Education study estimated the nonpublic schools' total annual operating costs at $4.7 billion,[4] while a conservative staff figure was less than half that amount. What makes precise recording difficult is that many nonpublic schools, particularly those whose expenses are included in a general church budget, have not kept strict accounting records which isolate school expenses. The actual replacement value or market value of nonpublic school buildings is also difficult to appraise because there is no wide demand for school property.

It is logical, however, to conclude that if taxpayers could be assured that part of their tuition payments could be used as offset to their Federal income tax, they would be willing to maintain and eventually increase their investment in quality nonpublic education. Every dollar of tax credit allowed for nonpublic school tuition will be matched by a dollar or more of private money invested in American education. The alternative to no credit could be a diminution of private investment to the point where virtually all American education would have to be publicly financed.

(c) Tax credits will elicit public support

Tax credit legislation need not arouse the highly emotional disputes which have beleaguered various proposals for direct Federal aid to nonpublic schools, notably to church-related schools. Testimony from many sectors encourages the Panel to believe that enlightened public discussion of tax credits will lead to these conclusions: (1) they can relieve the complex financial crisis in nonpublic education; (2) they will cause no difficulty for public education; and (3) they will maintain a healthy pluralism. Major opposition will come from those anxious to see nonpublic schools disappear altogether or so reduced in numbers that they count for nothing in American education.

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[4] Projections of Educational Statistics to 1979–1980, USOE, 1971.

(d) Tax credits will have a healthy psychological effect on nonpublic school patrons.

Many parents, depressed about the future of nonpublic education, are understandably fearful that financial difficulties may tempt school authorities to cut corners in the academic programs, with resultant harm to their children's scholastic progress. Toleration of mediocrity has sharp limits among those able to make a choice. Now is the time for government responses which can have multiple psychological effects in restoring parents' confidence in the viability of nonpublic schools. Suggestion of such governmental action provokes consideration of the nature of the required legislation and the cost of its implementation.

While the Panel has not endorsed a particular bill, it concludes that a satisfactory statute should include these salient features:

1. Restriction of tax credit to tuition paid to nonprofit nonpublic schools which are in full compliance with Federal civil rights requirements;
2. Limitation of tax credits to a fixed percentage of the tuition paid for nonpublic elementary and secondary school education (some pending bills set the percentage at fifty percent);
3. A maximum tax credit per child, set at a figure which provides substantial aid for parents without subjecting the Federal Government to an excessive loss of tax revenue (some pending bills have set the maximum at $400 per child);
4. A reduction in credit for high-income families.

The Cost

Estimating the costs for the total amount of tax credit which parents of nonpublic school pupils could claim under proposed legislation is difficult. An unpublished staff study of the Joint Committee on Internal Revenue Taxation, dated February 10, 1972, has the latest and probably the most reliable estimate. By considering both low-income families whose tuition payments exceed their tax liability and high-income families whose credit would be reduced under the proposed legislation, this study estimates the cost to the Federal Government at approximately $500 million.

Clearly, if tuitions rise and enrollments remain constant, the cost would increase, but relatively few schools levy tuitions at the $800 level which would be required to reach the suggested $400 maximum credit. Further, parents would still be required to pay at least half the tuition so that demand will afford some restraints on pricing in the educational market; finally, even with increases, the tax money denied the Treasury would be substantially less than the total amount of tax funds required to accommodate nonpublic school pupils in public school.

3. Federal construction loan program

The Panel recommends legislation leading to the establishment of a Federal construction loan program analogous to the F.H.A. instrumentality for home-buyers.

The Federal Government has a successful history of substantial loans for construction of educational facilities and further precedents in the National Defense Education Act, where NDEA loan programs have helped millions of American students. Certain nonpublic school enrollment losses have been attributed to a combination of mobility and resulting opportunity loss; when families with children enrolled in nonpublic schools move from one place (usually urban) to another (usually suburban), they find nonpublic education is not available. In the new area the first hurdle to alternative education is the construction cost, which, incidentally, tends to run higher in the very areas where many church-related schools have placed greatest emphasis.

Completely modern and permanent new plants can be prohibitively expensive to sponsors. In a following chapter the Panel recommends experiments with mobile, low-cost units.[5] Initial programs, supported through joint ventures with the U.S. Office of Education and the Department of Housing and Urban Development, may have great utility for school construction in new towns (a growing phenomenon) and for replacement of obsolete inner-city buildings.

Predictions for any widespread use of such loans cannot be made, but here again innovative government penetrations can test the market, analyze the results, and make proper assessments of such a program's long-range practicality. This recommendation is consistent with the Panel's philosophy to encourage private investment efforts and to build on successful government precedents.

4. Tuition reimbursements

Convinced that the Federal Government will be more deeply involved with long-range programs of Federal aid to education, the Panel recommends a tuition reimbursement process for nonpublic school children to assure full equity in all such undertakings.

While the Commission on School Finance expressed the view that the Federal Government should only play a role supplementary to the States in financing school costs, it also recommended Federal incentive grants to reimburse States for part of their costs of raising the State's share of total State and local educational outlays

[5] Chapter VI, A, 7.

above the previous year's percentage. Between $4 and $5 billion would be required over a five-year period to provide incentives for full State funding.

In an understandable desire to avoid needless control over the States, the Federal Government may simply allocate Federal funds on the basis of a State's total school population. This question then arises: will nonpublic school pupils who are **counted in** by the Federal Government for the purpose of allocating funds to the States be **counted out** by States when actual benefits are distributed? If this should occur, nonpublic school children would be victims of an intolerable injustice. Yet such a possibility exists because of State constitutional restrictions or because of indifference in State capitals to nonpublic school pupils' needs. *The Panel therefore recommends that every plan for general Federal aid to the States include a provision which guarantees nonpublic school pupils' equal participation. This guarantee can readily be accomplished by a tuition reimbursement process or a withholding provision.*

Under a tuition reimbursement process, every State receiving Federal funds allocated for **all** school children in that State would be required to establish a special account which, under State control, would be so administered that parents could claim reimbursement for nonpublic school tuition up to the full cost of tuition or the full Federal per capita allotment—whichever is lower. Pennsylvania and Ohio have already embarked on the reimbursement route, and therefore on-going programs exist to provide guidance for the Federal effort.

The Panel, aware of possible constitutional difficulties with the tuition reimbursement process, nevertheless recommends its inclusion in Federal legislation so that eventually it can be tested in the courts. The alternative is to exclude nonpublic school pupils from the Federal program. Such exclusion the Panel firmly rejects.

The withholding provision could be employed when a State is forbidden by its own constitution to administer Federal funds in aid of nonpublic school pupils. The Federal Government would then withhold a pro rata share of the State's allocation and administer such funds through the process of tuition reimbursement for the parents of nonpublic school pupils in that State. The withholding provision is a process which has guaranteed nonpublic school pupils' participation in the national school lunch program and in several ESEA programs.

C. Funding New Programs

Newspaper accounts have reported that a Federal value-added tax might replace the local property tax. Since there are 17,000 school districts which levy property taxes for their schools, it is clear that considerable time will be required to allow substantial adjustments.

The value-added tax is presently employed in most of the Common Market countries of Europe and can generate, according to published estimates, amounts in the neighborhood of $15 to $20 billion annually. It is a form of national sales tax imposed on manufacturing and distribution. Cost of the tax to the manufacturers is passed on to the ultimate consumer in the form of a price increase. Various reports indicate that government officials feel that a value-added tax would encourage American exports to Europe. The Advisory Commission on Intergovernmental Relations has been asked by the President to study the value-added tax proposal in detail, and the Panel feels it inappropriate to duplicate efforts.

It only notes that the proposed value-added tax embodies an element of regressivity. No tax should be imposed which places a disproportionate burden on the poor or low middle class. It may be possible, however, to provide for certain exemptions (food and medicine) and to incorporate certain devices (negative credits for those who pay no taxes or are in low-tax categories) to mitigate the more obvious disadvantages of the value-added tax.

The Brookings Institution (through the studies of Joseph Pechman and Benjamin Okner) has presented evidence to two Congressional Committees which rejects the value-added tax in favor of comprehensive income tax reform. The Brookings' proposals would reduce the average tax payments for families with incomes below $25,000 and would sharply increase taxes for the higher-income families. All options will be explored, and the Panel welcomes these undertakings.

D. Conclusion

The Panel believes that contemporary America—with its high mobility, its State and regional economic interdependencies and disparities, its need for trained manpower, enlightened citizenry, and

cultivated human beings—requires greater Federal concern for education. We believe the Federal Government has the resources to work with the States in providing equitably for *every* child's educational need, has the capacity to create mechanisms to stimulate both private and public efforts to offer quality schooling, and has the ability to engineer techniques for disbursements that insure efficiency, accountability, equity, and non-entanglement.

CHAPTER VI

THE PRIVATE CAPABILITY

THROUGHOUT THIS REPORT have run reinforcing themes. If the poor are to get educational choices and if the middle class are not to lose theirs, the Federal Government must help. At no time, however, was entertained the notion that the nonpublic school community would be, or should be, rescued totally by a public effort. The maxim that "God helps those who help themselves" has this secular variant: "When the going gets tough, the tough get going."

That times are tough is made clear in Commission-financed research on the economic and social dimensions of the nonpublic school crisis. These studies blend quantitative data, facts, digests of secondary research, generalizations, projections, opinions, and suggestions, and could leave the impression that nonpublic schools are so hopelessly situated an immediate call to abandon ship is the only sensible course. Produced by competent scholars under contract with the Commission, these findings must be critiqued by other experts before being accepted as the only policy-relevant body of information. No matter how the research is analyzed, it is clear that herculean measures and heroic self-sacrifice are called for.

This message, addressed to the nonpublic school community, is premised on both a fact and a value judgment. The stark fact is this: given the enormous demands on the public purse, no government instrumentality is able to provide full funding for private educational ventures over the next critical five-year period. The value judgment holds that a substantive voluntary commitment of both financial and human resources is essential to the vitality and quality of the nonpublic school enterprise.

Before delineating specific recommendations, however, the Panel wishes to reemphasize some very positive developments:

- Significant self-assessments leading to corrective action are taking place in many systems. Highly competent groups of externs have just completed two exhaustive studies for parochial schools in Washington and Philadelphia.
- A growing conviction exists that what was done fairly well by poor immigrant groups can be better done by today's affluent society.

- Because traditional values and conventional wisdom are under assault, more urgently needed than ever are schools which teach certain objective, moral and spiritual standards. As bioengineers learn more about human conception and human growth, the greater will be the pressures for social decisions relating to the individual's right to life, his relation to death, his sexual rights and duties, and the like. Today's debate on public attitudes toward abortion is simply a prelude to the whole issue of social control over individual life. Other questions impinge on the morality of war as an instrument of national policy, the priority of conscription, the traditional work ethic, the dimension of international justice, and the very concept of an all-sovereign Nation-State. Church-related schools also wrestle with situationist ethics, the nature of a faith commitment, the God-man relationships, authority, and the like. If the old challenge to sponsors of church-related schools was the preservation of the faith, the new challenge embraces the whole panorama of basic tenets on which a free society rests.

A. Recommendations

If the need for nonpublic schools is apparent and if combined public and private resources can be accumulated, the remaining ingredient is the will to put the nonpublic house in order. As a step in this direction, the Panel recommends that each nonpublic school undertake the following:

1. *Clarify its unique identity as a voluntary enterprise by setting forth its particular goals and objectives within the context of its resources and commitments.*
2. *Increase its association with all private and public schools in the locality.*
3. *Practice a policy of broad-based accountability—fiscal, professional, academic, and civic.* Nonpublic schools should lean over backwards to let the world know what they are doing.
4. *Accept a component of greater risk.* The risk will vary from school to school. One may face bankruptcy as an alternative to closing because of immediate financial pressure; another may endure public misunderstandings of its highly innovative academic programs; another may alienate clientele or financial backers because of a commitment to racial integration; and still another may opt to stay in a troubled neighborhood when opportunities beckon elsewhere. The future belongs to these nonpublic schools which dare to be exceptionally right.
5. *Break the problem-psychosis web which has created an unfortunate image of the Nation's nonpublic schools.* That nonpublic schools face a crisis is obvious, but a world of difference exists in perceiving the crisis as a challenge to do better or as a prelude to inescapable disaster.
6. *Embark on vigorous recruiting programs.* The seller's market has ended. Parents who, a few years ago, were willing

to pay a premium to enroll their children in a nonpublic school are "shopping" for the best school. It now is a buyer's market where children will be in short supply to a degree contradicting predictions made only three or four years ago. Most institutions will have to move competitively to maintain their membership.

If nonpublic schools are to operate at the full capacity necessary for financial health, their staffs, alumni, and sponsors must undertake aggressive recruitment effort. Certain prestigious academies and private universities with their systematic searches for qualified applicants have for years shown the way. In these efforts, it is common practice to involve not only professional recruiters, but alumni and faculty as well. If alumni and teachers stand by while enrollment drops, then who but themselves must carry a major burden for their institutions' crisis?

7. *Experiment with mobile units to minimize construction costs—especially in growing suburbs where needs for new public services are acute and public financial resources stretched.* Nonpublic school construction, a booming industry during the late fifties and early sixties, has come to a virtual halt, with the result that students who have moved from city to suburban neighborhoods are without choice. High construction costs deter churches and other traditional sponsors from going deeper into debt for new suburban schools. What occurs *in* the school is more important than what is put *on* the school. Mobile units can be easily dismantled when other facilities are required, when elements in the new community have resources for more permanent facilities, or, finally, when the same units are more needed to meet other changing mobility patterns.
8. *Pool resources with other nonpublic schools in a unified public relations project.* The advantages of such a joint enterprise are many. No public-relations program can be successful without the institution defining its image, and no package can be long sold unless realities match the claims. Schools must measure up to their stated ideals. Another by-product will be greater exchanges of information on curricula, teacher recruitment, staff salaries, budgetary operations, and the like. A knowledge of common problems may induce common solutions. And, of course, the ultimate goal of a more enlightened citizenry will be more fully realized.
9. *Exercise firm control over operating costs.* In this regard the Panel urges consideration of the following specific possibilities:
   a. **Operate at full capacity.** Each school should determine the number of pupils it can recruit and service within the limits of its physical, financial, and personnel resources.
   b. **Achieve payroll savings** which result from differential staffing, including employment of part-time teachers in special fields and paraprofessionals.
   c. **Purchase equipment and supplies through cooperative agencies** which give the advantages of wholesale prices.

d. **Take steps to give full-time employment** by means of the year-round school, and/or assignment to summer school. Supplemental employment may be one way to guarantee teachers an annual wage commensurate with their professional status and performance.
e. **Use the services of non-salaried volunteers whenever possible.** A voluntary enterprise should welcome volunteered assistance.

10. *Intensify efforts to expand and improve all private income sources.* Potential for increased revenue from higher tuition and fees and from larger contributions is unclear. While there is evidence that raised tuitions cause no mass exodus, one study showed that objection to higher rates was the alleged reason for about twenty percent of the transfers from nonpublic schools.

A hard question for financially harassed nonpublic school administrators is whether the support level can be raised. When economists were asked how much more supporters of nonpublic schools can pay, they answered that the gross amount of money in the hands of the nonpublic school people is more than sufficient; but the real potential is inseparably linked with judgments on the worth of nonpublic education. Federal tax arrangements encourage voluntary support, and full use of such incentives should be made.

An average annual tuition of only seventy dollars for Roman Catholic elementary schools is so remarkably low that it can probably be raised without undue hardship. The figure, however, is misleading because the average includes a large number which for years have never charged tuition; consequently, the median figure for schools charging tuition is higher. Whether a school derives its chief support from tuition or from church contributions is immaterial in terms of the total need, but the pattern of finance does, of course, have implications for government programs described elsewhere in this report.

Without prejudice to its firm recommendations for government aid programs, the Panel proposes these avenues to increase private investment:

a. For the support of church-related schools, encourage increased donations to the church, at least in proportion to inflationary trends. The income tax advantages should be made clear to all prospective contributors.
b. Regular raises are recommended so that tuition income will not lag behind the higher prices being charged for the school's normal purchase of goods and services.
c. To avoid "hand-to-mouth" financing and an atmosphere of constant crisis, nonpublic schools should have professionally prepared budgets developed after the widest possible consultation with the schools' patrons and benefactors. A major factor in the budget should be a long-term commitment to steady support.
d. Full public accounting should be made of the revenues and expenses, with a view to publicizing both the gen-

erosity and the needs of those supporting and operating nonpublic schools.

e. Within its own tradition, each school should take full advantage of all government benefits.

11. *Form partnerships wherever possible with institutions of higher learning and especially with those having the same sponsors.* Qualified interns and apprentices should be hired, and public regulations restricting their employment should be modified. Innovative arrangements with college and university faculty should be undertaken to the end that new and exciting teaching materials may be provided at low cost, consultant services offered on a sustaining basis, and other special skills acquired.
12. *Intensify the personal relationships between teacher and pupil.* One consistent result of attitudinal surveys offers evidence to show that supporters of nonpublic schools believe such institutions give more individual attention, maintain better discipline, and encourage an atmosphere of serious study. If this personal dimension is as crucial as research indicates, then the nonpublic schools must extend and reinforce that quality. Experiments which involve parents in the child's learning experiences could prove enormously advantageous.
13. *Embrace a full share of the moral and legal responsibility for integrated education.* Mere compliance with the minimum requirements of civil rights laws is not enough. The Nation expects its nonpublic schools to lead in discovering reasonable ways to advance the cause of racial integration. They should set a good example. Under no circumstances should a nonpublic school allow itself to become a haven for pupils in flight from public schools undergoing racial integration. It is useful to recall President John F. Kennedy's words at the time of the Birmingham crisis:

> Laws alone cannot make men right—we Americans are confronted primarily with a moral issue. It is as old as the Scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and opportunities, whether we are going to treat our fellow Americans as we want to be treated. . . . It is not enough to pin the blame on others or to deplore the facts we face. It is time to act in our daily lives.

B. Summary

The foregoing suggestions can only be made meaningful by the non-public school community itself. To that end the Panel urges *CAPE* to seek funding to support programs of self-help. The rescue operation must begin at home. The agenda for the rest of the decade is formidable. It is also exciting and attainable.

CHAPTER VII

TOWARD A MEANINGFUL PUBLIC DISCUSSION

FOUR YEARS FROM NOW, when the Nation celebrates its two-hundredth anniversary of independence, the fate of nonpublic schools, as they are known today, will have been largely determined. Wide discussion must precede public policy decisions regarding the future of pluralism in American education. The discussions will be lively and the conclusions fateful. The Panel suggests these key criteria for enlightened public debate:

A. The Criterion on Constitutionality

Even as schools struggle to further the ideal of a desegregated society, they concurrently face the task of reconciling religious freedom with the Non-Establishment Clause of the Constitution. New approaches should be undertaken in the light of recent decisions.

B. The Criterion of Opportunity

The basic premise for opportunity asserts that all children have a moral right to an education appropriate to their needs and potential. Obvious needs include education for competence in skills of reading, mathematics, and writing, and in such other civic-vocational skills that may constitute the individual child's specific interest. Beyond these informational areas are the *formational* needs, that is, grounding in moral and spiritual values, without which a free people cannot long exist.

C. The Criterion of Choice

Primary responsibility for education rests with the parent, not with the State. The fundamental expression of such obligation is the capacity of parents to select the school which they deem best accords with their child's needs. Rejected is the notion that a State, because it depends on an enlightened citizenry for its survival, should insure it by legislation which eliminates the parental role. In exercising this right, quite obviously parents may not indulge in racial or other forms of social injustice.

D. The Criterion of Quality

A school must be responsive to the varying needs of different children. While research on educational effectiveness is very extensive, the findings are neither consistent nor policy-relevant. This holds true whether the research deals with: (a) *input/output paradigms,* in which achievement is determined by the largess of resources offered the student; (b) the *process* approach, in which achievement is related to student/teacher interaction; or (c) the *organizational* approach, in which schools with multiple goals have their success measured by bureaucracy. The Panel feels that one truism underlies all others: competent men and women teaching what they enjoy, where they wish, to students seeking to learn have a positive quality denied to educational enterprises lacking these basic conditions.

E. The Criterion of Equity

No plan for educational reform should be encouraged if the net result is to diminish or obstruct the goal of a free, responsible, and integrated society, to place the heaviest financial burden on those least able to sustain it, or to deny access to schools favored by parents for their children. Equity, therefore, embraces not simply economic standards but psychosocial and moral qualities. While equity defies precise quantification, it will yield to rough-hewn norms for justice.

F. The Criterion of Incentive

This criterion refers to mechanisms which encourage Americans to invest in education, to take an active role in its development, and to give freely and voluntarily to its support. Willingness to shoulder a fair tax burden is essential, but if willingness stops at this point, the country not only loses voluntary contributions to, and voluntary investments in, the education of its children but also departs substantially from those laudable voluntaristic efforts noted by de Tocqueville in his classic study, *Democracy in America*. Everything should be done to maintain and increase the multi-billion dollar investment in nonpublic school students. This investment is meaningful to the vitality of an American society and to over five million students enrolled in the privately-supported sector.

Not unrelated to private investment is private giving. Anything which encourages a donative policy, with the concomitant note of sacrifice, should be encouraged. Personal sacrifice contributes toward cementing a free society. Something important has been learned from civil rights legislation in terms of what the Government can do to foster and sustain a free society, namely, that without good will and voluntarism the most noble legislation will prove inadequate.

G. The Criterion of Diversity

Part of America's genius has been to welcome people of richly variegated origins. Too often the ideal has been breached under the misguided view that "one nation indivisible" meant one homogenized citizenry. In truth, the United States is really a Nation-State composed of many national and cultural groups, with private institutions the practical means to reflect this diversity. But private institutions are in grave jeopardy. As Alan Pifer stated in his 1970 report to the Carnegie Foundation:

> Unless this decline (in private institutions) is arrested and reversed, we and our children after us, will almost certainly be living in a society where the idea of private initiative for the common good has become little but a quaint anachronism largely associated with the mores of an earlier age. Perhaps at that time there will be Americans who are reasonably satisfied with the kinds of lives offered them by a society which functions solely through public institutions. But there may well be others with a great yearning for more variety, more choice, more

animation, and more freedom in their lives than such a system would be likely to provide.

Not all Americans will accept these criteria, and many who do accept them will give different interpretations on what they really mean and how they can best be implemented. The important thing is to place the criteria under critical judgment and to trust democracy's ultimate logic.

CHAPTER VIII

SUMMARY

THE FINAL BALANCE SHEET must, of course, include major findings of fact and the implications of these findings for the public good. A brief restatement of both provides appropriate prelude to the Panel's summation of recommendations for both public and private action.

A. Findings of Fact

These are the finding of fact:

- Wide diversity of types exists within the nonpublic school segment.
- Enrollments are declining. Roman Catholic elementary schools lost 20.7 percent of their registrants between 1963 and 1969; the Missouri Synod of Lutheran Schools has also dipped in enrollment. But researchers reported, *"It seems likely that the storm now buffeting Catholic schools will soon affect most other nonpublic schools in the United States."* [1]
- Factors explaining declines are so mixed that it is unwise to rely on a single-cause approach in developing policy recommendations.
- Costs are rising. This is especially true of teachers' salaries, which constitute about seventy percent of operation costs. The growth of nonpublic school salaries can be expected to keep pace with that of the public sector.
- Constitutional criteria are still fluid, even though direct aid to to church-related schools is impermissible.
- Nonschool influences on learning are so powerful that solutions directed only toward school problems will prove inadequate.
- Widespread ignorance of the nonpublic school enterprise exists.
- Acceptance of nonpublic schools as necessary and nondivisive components of American education is growing.

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[1] Issues of Aid to Nonpublic Schools, I, Ch. VII:2.

B. Implications

1. **For the nonpublic community:**
   - The days of an assured student demand and automatic support have ended.
   - Overemphasis on problems, to the neglect of problem-solving, has created a poor public image.
   - Insularity has impeded comprehensive reform because problems of one school were not perceived as potential problems for all schools.
   - The public school crisis itself is so severe that demands for total public funding are presently unrealistic; therefore public support plans will still require enormous self-help.
2. **For the public:**
   - Some $3 billion of added operating costs could annually fall on the already heavily burdened public sector if nonpublic schools collapse.
   - The heaviest burden will fall on seven industrial States and on major urban centers which desperately need stabilizing support from every source.
   - The sociocultural costs may prove more prohibitive than dollar costs, especially for racially changing neighborhoods.
   - Effective choices for alternative education are declining.

C. The Public Interest

There is no doubt that educational pluralism is a force for good in American life. This view is fully shared by the Commission on School Finance, which concluded that nonpublic schools serve the public interest because:[2]

- They provide diversity, choice, and healthy competition to traditional public education.
- (They provide) the means for substantial groups of Americans to express themselves socially, ethnically, culturally, and religiously through educational institutions.[3]
- Inner-city religious schools may preserve a degree of ethnic and racial separation, but, at the same time, they also preserve at least a semblance of racial balance in these old neighborhoods.
- Urban nonpublic schools often enroll a significant number of children who are not adherents to their faith. This would

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[2] *Schools, People, and Money,* pp. 54–6.

[3] The Ohio State University Research Foundation Report to the Commission concluded that "the current forms of urban educational governance makes little allowance for diversity." *Problems of Financing Inner-City Schools,* p. 52.

indicate that their parents consider these schools preferable in quality to public education available to them.

These are surely elements of consequence to the public purpose.

D. Recommendations

For the nonpublic school community:

- Sharpen identity by defining specific goals and objectives for each school.
- Associate with public and other nonpublic educational agencies.
- Practice broad-based accountability.
- Break the problem-psychosis syndrome.
- Recruit vigorously.
- Experiment with economical mobile school construction.
- Mount joint public relations projects.
- Keep tight rein on operating costs.
- Strive to reach all private income sources—tuitions, gifts, contributed services.
- Build partnerships with colleges and universities, especially with those maintained by the same sponsors.
- Intensify the personal dimension in teacher/pupil relationships.
- Involve parents.
- Be a dedicated partner in integrated education.

For the public:

- Support Federal assistance programs for the urban poor.
- Grant Federal tax credits for nonpublic tuition costs.
- Extend Federal construction loan programs to nonpublic school sponsors.
- Provide participation to nonpublic school pupils on the same basis as for public school students in all future federal aid programs.

E. Valedictory

The time has come for a bold new look at education. To look boldly requires avoidance of two evils: (1) of ignoring the past and inviting previous errors, or (2) of worshipping the past and clinging to molds now obsolete.

For future education, the greater threat comes from the second course. All too vivid are the successes rather than the shortcomings of the melting-pot theory; all too ingrained is the memory of early religious divisiveness rather than religion's unifying contribution; all

too stressed is the threat of the nonpublic schools to the establishment, and forgotten are the attacks on religious and ethnic schools, especially violent after World War I. Problems which divide us today are no longer rooted in religious prejudice. Race and ethnic identity, poverty and crime, drugs and pollution are now the Nation's domestic concern.

The country's needs have changed. The churches' needs have changed. The schools' needs have changed. And new needs raise new questions. Can evidence support the myth that a seventeen-year-old high school senior is being indoctrinated in a church-related school, but a seventeen-year-old freshman is being educated in a church-related college? Is a publicly funded church-related school which fulfills all State requirements an intrinsic danger to the separation of church and State? What religious sect espouses an established State church? This world of fantasy must end sometime.

When it does, genuine freedom of choice in education will be the possession of all Americans. A Bill of Educational Rights can make this Nation's 1976 anniversary truly meaningful. In a word, the challenge to the American conscience is simply how best to deal with consequences flowing from the moment—

A CHILD IS BORN!

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